

ESTTA Tracking number: **ESTTA741450**

Filing date: **04/21/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|---|
| Proceeding | 91224595 |
| Party | Defendant BOL Enterprise (PVT) Limited |
| Correspondence Address | RICHARD S MANDEL COWAN LIEBOWITZ & LATMAN PC 114 West 47th Street NEW YORK, NY 10036 UNITED STATES imdadaliadv@gmail.com, jks@ccll.com, rsm@ccll.com, spc@ccll.com, trademark@ccll.com, mxe@ccll.com |
| Submission | Response to Board Order/Inquiry |
| Filer's Name | Scott P. Ceresia |
| Filer's e-mail | spc@ccll.com, jks@ccll.com, rsm@ccll.com, szl@ccll.com, njh@ccll.com, trademark@ccll.com |
| Signature | /Scott P. Ceresia/ |
| Date | 04/21/2016 |
| Attachments | BOL - Response to Notice of Default and Motion for Summary Judgment.pdf(24552 bytes) BOL - Ceresia Declaration (Response to Notice of Default and Motion for Summary Judgment).pdf(40944 bytes) BOL - Exhibit A.pdf(3540336 bytes) BOL - Exhibit B.pdf(4225089 bytes) BOL - Exhibit C.pdf(959992 bytes) BOL - Exhibits D-E.pdf(211281 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 86/478,579
Filed: December 12, 2014
For Mark: BOL GOSSIP (Stylized Urdu characters)
Published in the Official Gazette: June 30, 2015

| | | |
|---------------------------------|---|--------------------------|
| -----X | : | |
| INDEPENDENT MEDIA CORPORATION : | : | |
| (PVT.) LTD., | : | |
| | : | |
| Opposer, | : | Opposition No.: 91224595 |
| | : | |
| v. | : | |
| | : | |
| BOL ENTERPRISE (PVT.) LIMITED, | : | |
| | : | |
| Applicant. | : | |
| | : | |
| -----X | : | |

**APPLICANT’S RESPONSE TO NOTICE OF DEFAULT AND
MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Board’s Order dated March 23, 2016 [Dkt. 8], Applicant BOL Enterprise (Pvt.) Limited (“BOL”) (“Applicant”), by and through its undersigned attorneys, hereby responds to the notice of default issued by the Board in the above-referenced matter on January 8, 2016. [Dkt. 4.]

For reasons discussed below, good cause exists for setting aside the notice of default because: (i) Applicant’s failure to timely file an Answer was purely inadvertent; (ii) there is no conceivable prejudice to Opposer Independent Media Corporation (Pvt.) Ltd. (“Opposer”) resulting from Applicant’s brief delay in filing an Answer; and (iii) Applicant has a meritorious defense to this opposition, namely, Opposer’s claims are barred under the doctrine of res judicata in view of the Board’s summary judgment decision dismissing a related opposition proceeding commenced by Opposer, Consol. Opp. No. 91216909, in which the Board held that Opposer was

precluded as a matter of law from establishing prior trademark rights in the mark BOL as necessary to sustain its claims for likelihood of confusion and fraud. Opposer's Notice of Opposition in the instant proceeding, involving identical parties and the same claim of rights in the mark BOL, is premised on the same theory of priority that the Board has previously found to be legally deficient. Applicant therefore requests that its Answer submitted herewith asserting the affirmative defense of res judicata be made of record.

Moreover, because res judicata bars Opposer's claims in this proceeding as a matter of law, Opposer respectfully moves for summary judgment dismissing the instant proceeding.

FACTS

Applicant BOL and Opposer IMC are companies based in Pakistan.

Opposer previously filed three oppositions against Applicant's applications to register BOL-formative marks, namely: (1) Applicant's application to register the mark BOL and Design for services in International Class 41, as shown in Application Serial No. 85/966,100 (Opposition No. 91216909); (2) Applicant's application to register the mark BOL and Design in stylized Urdu characters for services in International Classes 38 and 41, as shown in Application Serial No. 86/003,454 (Opp. No. 91216942); and (3) Applicant's application to register the standard character word mark BOL for services in International Classes 38 and 41, as shown in Application Serial No. 86/165,686 (Opposition No. 91219384). The Board subsequently consolidated the oppositions and designated Opposition No. 91216909 as the parent opposition. Consol. Opp. 91216909, Dkts. 8 & 18.

Opposer's three Notices of Opposition in Consolidated Opposition No. 91216909 were virtually identical and asserted claims for likelihood of confusion and fraud based upon Opposer's alleged prior rights in the mark BOL in the United States. *See* Declaration of Scott P.

Ceresia (“Ceresia Decl.”), Exs. A-C. On June 24, 2015, Applicant filed a motion for summary judgment in Consolidated Opposition No. 91216909 seeking to dismiss Opposer’s claims on the ground that its theory of priority – based *solely* on its exploitation and promotion of a single Pakistani motion picture entitled “Bol” – was barred as a matter of law under the “single creative work” doctrine established by binding Federal Circuit and Board precedent. Consol. Opp. 91216909, Dkt. 14.

On January 14, 2016, the Board granted Applicant’s motion for summary judgment dismissing Consolidated Opposition No. 91216909, holding that Opposer was precluded as a matter of law from establishing prior trademark rights in the mark BOL as necessary to sustain its claims for likelihood of confusion and fraud. Ceresia Decl., Ex. D (Consol. Opp. 91216909, Dkt. 29)).

On October 28, 2015, while Applicant’s motion for summary judgment in Consolidated Opposition No. 91216909 was pending, Opposer instituted the instant proceeding against Applicant’s application to register the mark BOL GOSSIP in stylized Urdu characters for services in International Class 41. [Dkt. 1.] The Notice of Opposition filed by Opposer in the instant proceeding is virtually identically to its three earlier Notices of Opposition subject to Consolidated Opposition No. 91216909, similarly premising its claims for likelihood of confusion and fraud based on its alleged prior rights in the mark BOL. [*Id.*] Opposer’s U.S. counsel did not receive notice of the institution of the instant proceeding because it was not at that time the attorney of record for the subject application. Ceresia Decl. ¶ 13.

In or around the time the Board issued its summary judgment decision in Consolidated Opposition No. 91216909, Opposer’s U.S. counsel became aware of the instant proceeding, and specifically the Notice of Default issued by the Board on January 8, 2016 [Dkt. 4] upon

Applicant's failure to timely file an Answer. Ceresia Decl. ¶ 14. In its Notice of Default, the Board ordered Applicant to show cause by February 7, 2016 why a judgment by default should not be entered against it. [Dkt. 4.] On February 4, 2016, after Applicant's U.S. counsel had advised it as to the pendency of the instant proceeding, Applicant filed a request for a thirty-day extension to prepare a response to the notice of default, which the Board granted by setting a response deadline of April 22, 2016. [Dkt. 8.]

Opposer's sixty-day deadline to appeal the Board's January 14, 2016 summary judgment decision dismissing Consolidated Opposition No. 91216909 has expired. *See* 15 U.S.C. § 1071.

Applicant's proposed Answer asserts as an affirmative defense that the claims in the instant proceeding are barred under the doctrine of res judicata. Ceresia Decl., Ex. E at 4.

ARGUMENT

A. Good Cause Exists to Set Aside the Notice of Default

Applicant respectfully submits that the notice of default should be set aside for good cause. "As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense." *Alpine Mortg. Corp. v. Mortgage Dep't, Inc.*, Opp. No. 91166379, 2006 TTAB LEXIS 328, at *3 (T.T.A.B. Aug. 14, 2006) (citing *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 U.S.P.Q.2d 1556 (T.T.A.B. 1991)). Moreover, "[t]he Board is mindful of its policy to decide cases on their merits where possible and only reluctantly enters judgment by default for failure to timely answer." *Id.*

All of these factors favor a finding of good cause in this case.

First, Applicant was unaware of the instant proceeding, and thus the need to file an Answer, due to an innocent failure to update the address for its U.S. domestic representative. As

soon as Applicant was advised of the proceeding by its U.S. counsel, it promptly responded to the Board's order and is now submitting the present response along with its proposed Answer. This is clearly not a case of willfulness or bad faith. *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, Opp. No. 84,521, 1991 TTAB LEXIS 45 (T.T.A.B. Nov. 7, 1991) (good cause found where "the failure to timely file the answer was clearly due to an inadvertence on the part of applicant's counsel and not the result of any willful conduct or gross neglect"); *H. J. Heinz Co. v. Taco Maker, Inc.*, Opp. No. 113,583, 2001 TTAB LEXIS 271, at *2-3 (T.T.A.B. Mar. 26, 2001) (good cause found where "applicant's failure to timely file its answer was clearly due to a docketing mix-up and not the result of any willful conduct or gross neglect").

Second, given the early stage of this proceeding, there is no conceivable prejudice resulting from Applicant's brief delay in filing an Answer. *Alpine Mortg. Corp.*, 2006 TTAB LEXIS 328, at *3-4 (no prejudice from applicant's shorty delay in filing answer); *H. J. Heinz Co.*, 2001 TTAB LEXIS 271, at *2-3 (no prejudice from applicant's 74-day delay in filing answer).

Third, as pled in its proposed Answer and as set forth more fully below, Applicant has a meritorious defense to Opposer's claims, namely, the claims are barred as a matter of law under the doctrine of res judicata. The submission of a non-frivolous Answer is sufficient to show good cause justifying the setting aside of a default. *Fred Hayman Beverly Hills*, 1991 TTAB LEXIS 45, at *3 (good cause found where applicant submitted late-filed answer with meritorious defense); *H. J. Heinz Co.*, 2001 TTAB LEXIS 271, at *2-3 (same).

For the foregoing reasons, Applicant respectfully requests that the Board set aside the notice of default in favor of an adjudication of this proceeding on the merits and permit Applicant's proposed Answer to be made of record.

B. The Board Should Summarily Dismiss The Instant Proceeding Because Opposer's Claims Are Barred by Res Judicata

In addition to setting aside the notice of default, the Board should summarily dismiss the instant proceeding as it is barred by res judicata. The doctrine of res judicata “precludes the relitigation of a claim . . . which was litigated in a prior proceeding involving the same parties or their privies for which a final judgment ‘on the merits’ has been entered.” *Stealth Indus. v. GMI Holdings, Inc.*, Opp. No. 96,144, 1999 TTAB LEXIS 687, at *11 (T.T.A.B. Dec. 8, 1999) (citation omitted). Thus, a second proceeding will be barred by res judicata if: “(1) there is identity of parties (or their privies); (2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the first.” *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362 (Fed. Cir. 2000).

All three elements are clearly present here. The parties in both proceedings are identical, and the Board’s summary judgment decision dismissing the earlier Consolidated Opposition No. 91216909 constitutes a final judgment on the merits.¹

Nor can there be any dispute that Opposer’s likelihood of confusion and fraud claims asserted in the instant opposition are based on the same transactional facts at issue in Consolidated Opposition No. 91216909 which the Board held were insufficient, as a matter of law, to establish the element of priority. Indeed, Opposer’s three Notices of Opposition subject to the earlier opposition are virtually identical to its pleading in the instant proceeding, all of which allege a Section 2(d) claim and a claim for fraud on the USPTO premised upon Opposer’s non-existent prior rights in the mark BOL. *Compare* Ceresia Decl., Exs. A-C, *with* Dkt. 1.

The Board has not hesitated to dismiss an *inter partes* proceeding as barred by res

¹ The time for Opposer to appeal the Board’s January 14, 2016 summary judgment decision in the earlier opposition has expired. *See* 15 U.S.C. § 1071.

judicata where, as here, the issue of priority was previously resolved in an earlier Board proceeding. *See, e.g., Urock Network, LLC v. Sulpasso*, 115 U.S.P.Q.2d 1409, 1410-14 (T.T.A.B. 2015) (cancellation claim alleging priority of use and likelihood of confusion barred under res judicata based upon judgment in earlier opposition proceeding involving same parties and same set of transactional facts); *HBP, Inc. v. Becker Designs, Inc.*, Cancellation No. 92046543, 2008 TTAB LEXIS 528, at *3-8 (T.T.A.B. July 17, 2008) (cancellation claim alleging likelihood of confusion barred under res judicata where Board's decision in earlier opposition between the parties found that petitioner had failed to establish priority of use on an "essentially identical" claim); *Finck Cigar Co. v. El Duque Group, Inc.*, Cancellation No. 29785, 2001 TTAB LEXIS 42, at *3-12 (T.T.A.B. Jan. 17, 2001) (cancellation petition barred by res judicata where based on same claims of priority of use and likelihood of confusion had been decided against petitioner in earlier opposition proceeding).

These principles apply with equal force here and necessitate the summary dismissal of the instant proceeding.

CONCLUSION

For the foregoing reasons, the Board should set aside the notice of default for good cause and summarily dismiss the instant proceeding as barred by res judicata.

Dated: New York, New York
April 21, 2016

Respectfully submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.

By: /Joel Karni Schmidt/
Joel Karni Schmidt
Richard S. Mandel
Scott P. Ceresia
114 West 47th Street
New York, New York 10036
(212) 790-9200
Attorneys for Applicant BOL Enterprise (Pvt.)
Limited

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing APPLICANT'S RESPONSE TO NOTICE OF DEFAULT AND MOTION FOR SUMMARY JUDGMENT, including the supporting declaration and exhibits, was served on Opposer Independent Media Corporation (Pvt.) Ltd. by mailing copies by First Class Mail, postage prepaid, on April 21, 2016, to Opposer's Attorney and Correspondent of Record, Harold L. Novick, Esq., Novick, Kim & Lee, PLLC, 1604 Spring Hill Road, Suite 320, Vienna, VA 22182.

/Scott P. Ceresia/

Scott P. Ceresia

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86/478,579
Filed: December 12, 2014
For Mark: BOL GOSSIP (Stylized Urdu characters)
Published in the Official Gazette: June 30, 2015

| | | |
|----------------------------------|---|---------------------------------|
| -----X | : | |
| INDEPENDENT MEDIA CORPORATION : | : | |
| (PVT.) LTD., : | : | Opposition No.: 91224595 |
| Opposer, : | : | |
| v. : | : | |
| BOL ENTERPRISE (PVT.) LIMITED, : | : | DECLARATION OF SCOTT P. |
| Applicant. : | : | CERESIA, ESQ. IN SUPPORT |
| -----X | : | OF APPLICANT'S RESPONSE |
| | : | TO NOTICE OF DEFAULT AND |
| | : | MOTION FOR SUMMARY |
| | : | <u>JUDGMENT</u> |

SCOTT P. CERESIA, pursuant to 28 U.S.C. §1746, declares:

1. I am an associate at Cowan, Liebowitz & Latman, P.C., attorneys for Applicant BOL Enterprise (Pvt.) Limited ("Applicant"). I submit this declaration in support of Applicant's Response to Notice of Default and Motion for Summary Judgment seeking to dismiss the claims asserted by Opposer Independent Media Corporation (Pvt.) Ltd. ("Opposer") in the Notice of Opposition. I have personal knowledge of the facts set forth herein and would be competent to testify to such matters if called as a witness in this proceeding.

2. Opposer previously filed three oppositions against Applicant's applications to register BOL-formative marks, namely: (1) Applicant's application to register the mark BOL and Design for services in International Class 41, as shown in

Application Serial No. 85/966,100 (Opposition No. 91216909); (2) Applicant's application to register the mark BOL and Design in stylized Urdu characters for services in International Classes 38 and 41, as shown in Application Serial No. 86/003,454 (Opp. No. 91216942); and (3) Applicant's application to register the standard character word mark BOL for services in International Classes 38 and 41, as shown in Application Serial No. 86/165,686 (Opposition No. 91219384).

3. Attached hereto as **Exhibit A** is a true and correct copy of Opposer's Notice of Opposition filed in Opposition No. 91216909, dated June 18, 2014.

4. Attached hereto as **Exhibit B** is a true and correct copy of Opposer's Notice of Opposition filed in Opposition No. 91216942, dated June 18, 2014.

5. Attached hereto as **Exhibit C** is a true and correct copy of Opposer's Notice of Opposition filed in Opposition No. 91219384, dated November 18, 2014.

6. The Board subsequently consolidated the oppositions and designated Opposition No. 91216909 as the parent opposition. Consol. Opp. 91216909, Dkts. 8 & 18.

7. Opposer's three Notices of Opposition in Consolidated Opposition No. 91216909 were virtually identical and asserted claims for likelihood of confusion and fraud based upon Opposer's alleged prior rights in the mark BOL in the United States. *See Exhibits A-C hereto.*

8. On June 24, 2015, Applicant filed a motion for summary judgment in Consolidated Opposition No. 91216909 seeking to dismiss Opposer's claims on the ground that its theory of priority – based solely on its exploitation and promotion of a single Pakistani motion picture entitled “Bol” – was barred as a matter of law under the

“single creative work” doctrine established by binding Federal Circuit and Board precedent. Consol. Opp. 91216909, Dkt. 14.

9. Attached hereto as **Exhibit D** is a true and correct copy of the Board’s summary judgment decision in Consolidated Opposition No. 91216909, dated January 14, 2016.

10. On January 14, 2016, the Board granted Applicant’s motion for summary judgment dismissing Consolidated Opposition No. 91216909, holding that Opposer was precluded as a matter of law from establishing prior trademark rights in the mark BOL as necessary to sustain its claims for likelihood of confusion and fraud. *See* Exhibit D hereto.

11. On October 28, 2015, while Applicant’s motion for summary judgment in Consolidated Opposition No. 91216909 was pending, Opposer instituted the instant proceeding against Applicant’s application to register the mark BOL GOSSIP in stylized Urdu characters for services in International Class 41. Dkt. 1.

12. The Notice of Opposition filed by Opposer in the instant proceeding is virtually identically to its three earlier Notices of Opposition subject to Consolidated Opposition No. 91216909, similarly premising its claims for likelihood of confusion and fraud based on its alleged prior rights in the mark BOL. *Compare* Exhibits A-C hereto, *with* Dkt. 1.

13. Our firm did not receive notice of the institution of the instant proceeding because at that time we were not the attorney of record for the subject application.

14. In or around the time the Board issued its summary judgment decision in Consolidated Opposition No. 91216909, our firm became aware of the instant

proceeding, including the Notice of Default issued by the Board on January 8, 2016 [Dkt. 4] upon Applicant's failure to timely file an Answer.

15. After our firm advised Applicant as to the pendency of the instant proceeding, on February 4, 2016, Applicant filed a request for a thirty-day extension to prepare a response to the notice of default, which the Board granted by setting a response deadline of April 22, 2016. Dkt. 8.

16. Applicant submits herewith as **Exhibit E** its proposed Answer to the Notice of Opposition, which asserts as an affirmative defense that the claims in the instant proceeding are barred under the doctrine of res judicata in view of the Board's summary judgment decision in Consolidated Opposition No. 91216909.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT. EXECUTED ON APRIL 21, 2016 AT NEW YORK, NEW YORK.


SCOTT P. CERESIA

EXHIBIT A

ESTTA Tracking number: **ESTTA610513**

Filing date: **06/18/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | Independent Media Corporation (PVT.) LTD |
| Granted to Date of previous extension | 06/18/2014 |
| Address | Printing House1.1 Chundrigar Road Karachi, PAKISTAN |

| | |
|-------------------------|---|
| Domestic Representative | Harold L Novick Novick, Kim & Lee, PLLC Suite 320 Vienna, VA 22182 UNITED STATES docket@nkllaw.com, hnovick@nkllaw.com, hnovick@novick.com Phone:7035468554 |
|-------------------------|---|

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 85966100 | Publication date | 02/18/2014 |
| Opposition Filing Date | 06/18/2014 | Opposition Period Ends | 06/18/2014 |
| Applicant | BOL ENTERPRISE (PVT.) LIMITED 114-116 C, Jami Commercial Street # 13, Karachi, PAKISTAN | | |

Goods/Services Affected by Opposition


| |
|---|
| Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Audio production services, namely, creating and producing ambient soundscapes, and sound stories for museums, galleries, attractions, podcasts, broadcasts, websites and games; Education services, namely, providing hands-on opportunities for children in the field of intuitive engineering through live, broadcast, and on-line classes, seminars, workshops, training and curriculum development for children, parents and educators; Entertainment in the nature of an ongoing special variety, news, music or comedy show featuring politics, social issues, current affairs, drama and news broadcast over television, satellite, audio, and video media; Entertainment services, namely, an ongoing series featuring variety and news provided through satellite television; Entertainment services, namely, providing continuing musical, comedy and variety stage shows, dramatic shows, and news shows broadcast over television, satellite, audio, and video media |
|---|

Grounds for Opposition

| | |
|---|---|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |

Marks Cited by Opposer as Basis for Opposition

| | | | |
|------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | BOL | | |
| Goods/Services | Movies and films, and pre-recorded CD#s, video tapes, laser disks and DVDs featuring social drama in Class 009; and For audio production services, education services, and entertainment and entertainment services in Class 041. | | |

| | | | |
|----------------------|---|-----------------------|------------|
| U.S. Application No. | 86288431 | Application Date | 05/21/2014 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | BOL | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 041. First use: First Use: 0 First Use In Commerce: 0 Entertainment services in the nature of television talent show, musical performances, and the production of radio and television programmes | | |

| | |
|-------------|--|
| Attachments | 86288431#TMSN.jpeg(bytes) NOTICE OF OPP by IMC-filed ver.pdf(19972 bytes) Suit 1461 of 2013 (BOL) Plaint2.pdf(1759502 bytes) Pak Injunction Order.pdf(1000401 bytes) |
|-------------|--|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------------|
| Signature | /Harold L Novick/ |
| Name | Harold L Novick |
| Date | 06/18/2014 |

STATEMENT OF OPPOSITION

1. Opposer since prior to Applicant's filing date of its Intent To Use application of June 21, 2013 adopted and continuously used in commerce the mark BOL in standard characters and in fanciful lettering (individually and collectively, "BOL Mark") for, inter alia, movies and films, and pre-recorded CD's, video tapes, laser disks and DVDs featuring social drama (Class 9 Products).

2. Opposer since prior to Applicant's filing date of its Intent To Use application of June 21, 2013 adopted and continuously used in commerce the BOL Mark for audio production services, education services, and entertainment and entertainment services (Class 41 Services)

3. Opposer filed a trademark application for its BOL Mark for some of its services under Section 44E in the U.S. Patent and Trademark Office on May 21, 2014, which was assigned Serial Number 86/288,431.

4. Opposer has enjoyed and continues to enjoy substantial success in the promotion of its Class 9 Products bearing its BOL Mark, which have been continuously promoted, advertised, imported into, and sold throughout the United States and in other countries throughout the world where United States citizens travel. Its Class 9 Products are also currently available on the internet, such as the Amazon website.

5. Opposer has expended substantial sums to advertise and promote its Class 9 Products and Class 41 Services, and the customers thereof constitute a significant number of persons who are located throughout the United States.

6. By virtue of its use and sale, and of its advertising and promotional expenditures for its goods and services, Opposer's BOL Mark has become well and favorably known to the film viewing industry and to the public in general as an indication of origin of Opposer's Class 9 Products, and by the viewing and listening public as an indication of origin of Opposer's Class 41 Services.

7. By virtue of its substantial sale, advertisement and promotion of its BOL Mark, Opposer has built up extensive good will and consumer recognition of its BOL Mark.

8. The word portion of Applicant's proposed mark is BOL, and is identical to Opposer's mark, BOL, and thus is confusingly similar thereto.

9. Because of the similarity of Applicant's proposed mark to Opposer's BOL Mark, confusion, mistake or deception of the public and purchasers and users or prospective purchasers and users is not only likely, but inevitable.

10. Applicant's services are intended to be provided to the same class of customers as Opposer's Class 9 Products and Class 41 Services are now being provided.

11. Applicant's services are intended to be provided in the same channels of trade as Opposer's Class 9 Products and Class 41 Services are now being provided.

12. Applicant's intended services are related to Opposer's Class 9 Products and Class 41 services now being provided.

13. There is likelihood that should Applicant use its mark in connection with its services such that it will cause confusion, or cause mistake, or deceive.

14. If Applicant were to use its proposed mark in connection with its intended services, there is a likelihood that consumers and users and prospective consumers and users of Opposer's goods bearing its BOL Mark and of Opposer's services in connection with its BOL Mark would believe that Opposer produced or sponsored those services or was in some way connected with Applicant.

15. Opposer, because of its earlier use in commerce, has superior rights to the BOL Mark than Applicant.

16. Should Applicant obtain a registration for its proposed mark, such registration would damage the rights of Opposer because such registration would interfere with Opposer's rights in its BOL Mark, and would provide Applicant with prima facie evidence of the validity of a mark which is likely to cause confusion, to cause mistake or to deceive in view of Opposer's BOL mark.

17. Registration of Applicant's mark thus will damage and injure Opposer within the meaning of the Trademark Act.

18. Applicant has applied for registration of its mark in bad faith and its declaration supporting its application is false and fraudulent because Applicant knew of Opposer's prior rights when Applicant executed its application's declaration.

19. Opposer brought a suit against Applicant in Pakistan for, inter alia, trademark infringement of Opposer's Pakistani registered mark BOL, and was granted a world-wide preliminary injunction against Applicant. A copy the Complaint is attached hereto as Exhibit 1, and is incorporated herein by reference. A copy of the Injunction Order restraining Applicant is attached hereto as Exhibit 2 and is incorporated herein by reference.

WHEREFORE, Opposer prays that this Opposition be sustained, that the mark of Applicant be refused and denied registration, and that the application by Applicant be rejected; and prays for such other and further relief as the Board deems appropriate.

(AMENDED TITLE)
IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 1461 / 2013

Presented on 20/11/13

Assistant Registrar (D-III)

INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED
(A company incorporated under
The Companies Ordinance 1984)
Having its principle place of business
At Printing House, I. I. Chundrigar Road,
Karachi
(Through its authorized signatory)

Plaintiff

Versus

1. Shoaib Ahmed Sheikh S/o Bashir Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
2. Ayesha Shoaib Sheikh W/o Shoaib Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
3. Vikas Atiq S/o Atiq-ur-Rehman
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
4. Mrs. Sarwat Bashir W/o Vikas Atiq
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
5. BOL News (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi
6. BOL Enterprises (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi

7. Labbaik (Private) Limited
(A company incorporated under
The Companies Ordinance 1984)
(Through its Chief Executive/Directors)
Having its principle place of business
at C-47, 16th Commercial Street,
Phase-II, DHA,
Karachi
8. Axact (Private) Limited
(a Pakistani company)
Through its Chief Executive / Directors/Secretary)
Of 114-116, Jami Commercial Street,
Phase-II, DHA,
Karachi
9. Pakistan Electronic Media Regulatory Authority
Through its Chairman
Having place of business at
Mauve Area,
Islamabad
10. Securities & Exchange Commission of Pakistan
Company Registration Office
State Life Building-2, 4th Floor
North Wing, Wallace Road,
Karachi

Defendants

**SUIT FOR PERMANENT INJUNCTION, DAMAGES & RENDITION
OF ACCOUNTS AGAINST INFRINGEMENT OF TRADEMARK,
PASSING OFF AND UNFAIR COMPETITION UNDER THE
TRADEMARKS ORDINANCE 2001 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW**


The Plaintiff most respectfully submits as under:

1. That the Plaintiff is Private Limited Company duly incorporated under the Companies Ordinance 1984, having its place of business at Printing House, I. I. Chundrigar Road, Karachi, and the titled Suit has been filed by the Plaintiff through Mr. Mansoor Rehman S/o Ata-ur-Rehman, authorized officer of the company duly empowered to act on behalf of the Plaintiff.

(Attached herewith is the copy of Board
Resolution marked as Annexure A)

Karachi.

Dated: 19-11-2013


Advocate for the Plaintiff

IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 1461 / 2013

Presented on 19/11/13

INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED

(A company incorporated under
The Companies Ordinance 1984)
Having its principle place of business
At Printing House, I. I. Chundrigar Road,
Karachi

(Through its authorized signatory) Plaintiff

Versus

- 1650
1. Shoaib Ahmed Sheikh S/o Bashir Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
 2. Ayesha Shoaib Sheikh W/o Shoaib Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
 3. Vikas Atiq S/o Atiq-ur-Rehman
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
 4. Mrs. Sarwat Bashir W/o Viqas Atiq
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
 5. BOL News (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi

- 5
6. BOL Enterprises (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi
 7. Labbaik (Private) Limited
(A company incorporated under
The Companies Ordinance 1984)
(Through its Chief Executive/Directors)
Having its principle place of business
at C-47, 16th Commercial Street,
Phase-II, DHA,
Karachi
 8. Axact (Private) Limited
(a Pakistani company)
Through its Chief Executive / Directors/Secretary)
Of 114-116, Jami Commercial Street,
Phase-II, DHA,
Karachi
 9. Pakistan Electronic Media Regulatory Authority
Through its Chairman
Having place of business at
Mauve Area,
Islamabad

..... Defendants

**SUIT FOR PERMANENT INJUNCTION, DAMAGES & RENDITION
OF ACCOUNTS AGAINST INFRINGEMENT OF TRADEMARK,
PASSING OFF AND UNFAIR COMPETITION UNDER THE
TRADEMARKS ORDINANCE 2001 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW**

The Plaintiff most respectfully submits as under:

1. That the Plaintiff is Private Limited Company duly incorporated under the Companies Ordinance 1984, having its place of business at Printing House, I. I. Chundrigar Road, Karachi, and the titled Suit has been filed by the Plaintiff through Mr. Mansoor Rehman S/o Ata-ur-Rehman, authorized officer of the company duly empowered to act on behalf of the Plaintiff.

(Attached herewith is the copy of Board
Resolution marked as Annexure A)

2. That the Plaintiff is a leading television broadcaster and a member of the Jang Group, Pakistan's leading media conglomerate. The group launched Pakistan's first 24-hour satellite television channel **GEO** and now operates a number of different channels, which collectively have the highest viewership in the country and are also popular throughout the world. The group also publishes a number of newspapers and magazines including **Daily Jang**, which is the largest circulating newspaper in Pakistan and the most widely read Urdu Newspaper in the world. The Plaintiff is a creator, developer, producer and broadcaster of news, television shows, entertainment programs, drama serials, sporting events, documentaries, music, etc and operates a number of television channels.

(Attached herewith is the copy of
Company Profile marked as **Annexure B**)

3. That the Plaintiff started its first transmission on August 2002 and was the first South Asian Urdu language channel out of Pakistan to provide content comparable with world class television broadcasters. The plaintiff's success can easily be gauged from the fact that the plaintiff's channel achieved 99% reach on C&S footprint in Pakistan within two weeks of its test signal launch and became the highest rated C&S channel of Pakistani origin within the first quarter of its launch.
4. That it will be well in consonance with the facts and circumstances of the case that starting as a single multi-dimensional channel in the year 2002, the Plaintiff's determination and hard work resulted in a stable and gradual increase in the business. By proficiently catering to viewer's requirements and demands, the Plaintiff has achieved significant milestones in relatively short span of time. The Plaintiff and its affiliated concerns broadcast / transmit a number of different channels in the Entertainment, News, Sports and Youth Programming genres, namely **GEO NEWS**, **GEO ENTERTAINMENT**, **GEO SUPER**, **GEO KAHANI** and **GEO TEZ** in Pakistan and internationally. Moreover, the Plaintiff's 24-hours news channel **GEO NEWS** achieved 100% penetration of C&S footprint in Pakistan within ten days of its launch, which is not less than a history in itself.

5. That it is equally important to state here that the plaintiff has emerged not only as one of the leading makers / producers / broadcasters of television programs being broadcasted through its different channels that includes entertainment, sports, youth programs, news coverage etc. at the international level but at the same time has established most dynamic alliance with its viewers by providing them with an unparalleled of programing and providing access to vital information.
6. That due to its extensive news coverage of up-to date national and international affairs, reports, debates, discussions, live coverage of national and international mega events and programs over current affairs, the plaintiff is regarded as the first hand comprehensive and reliable source of information for public at large which people have learnt to rely upon over a period of time. That in addition thereto, the plaintiff has also earned immense popularity and envious goodwill for other musical, dramatic, fictional, sports and documentary programs being broadcasted on the above mentioned channels of the plaintiff.
7. That it goes without saying that the plaintiff has secured immense goodwill all around the World as the plaintiff's channels are not only broadcasted in Pakistan but in almost every part of the World including Middle East, USA, Canada, Australia, UK and Europe. The plaintiff has acquired huge popularity and is being recognized by people of all ages due to its distinctive, peculiar and specific color scheme, lettering style and logo and said trademark/service mark and has secured loyal viewership of its channels.
8. That it is important to mention here that the Plaintiff has spent substantial amount of time, money and labor on creating, developing, producing, marketing and broadcasting its programs that include, but are not limited to, news, entertainment, sports, reality shows etc. on different channels of the plaintiffs which are highly liked by its millions of fans and viewers all around the World. The fan following of the plaintiff's channels can be easily gauged from the fact that the plaintiff's pages, individually of each

4
channel, on social networks like Face book and Twitter are 'liked' by more than half a million users, which is a very strong evidence of plaintiff's success.

9. That it is worth mentioning here that the plaintiff has the largest news gathering infrastructure with the largest network of reporters in Pakistan. In addition thereto, the correspondents and news reporters of the plaintiff are spread all over the World to cover each and every important news, report, debate, discussion and event happening anywhere around the World. The Plaintiff also has a dedicated Market Research and Product Development Wing to support news and entertainment channel content, which is highly valued and appreciated by the world wide viewers of the plaintiff.
10. That the plaintiff employs world class standards and latest cutting edge technology for the coverage, broadcasting and its day to day media operations. The plaintiff has fully automated newsroom and play-out system in line with the latest international standards in this field. In addition thereto, the plaintiff has 100% digital platform being managed by a best of breed content management system. Furthermore, the plaintiff has used wireless cameras and remote controlled cameras to cover mega events nationally and internationally, which positions it in the group of top media broadcasters of the World.
11. That the plaintiff plays a significant role in the employment sector of this developing nation and heavily invests extensive amounts on the recruitment and training of its staff / employees. The plaintiff has hired over 2500 of Pakistan's best Media talent at each level of the organization whose hard work and dedication is quite discernable from the current standing of the plaintiff's company from each and every angle. The plaintiff is very proud of the fact that the top management and second level of line managers of the plaintiff has media management experience of close to 300 years which makes them extremely valuable assets of the company and the plaintiff duly acknowledges that.

12. That the Plaintiff without a doubt represents the pinnacle of success borne to fruition through hard work and dedication. The plaintiff has achieved number of prestigious Awards since its inception, thus setting its own league and being an admiration for the others to follow. The plaintiff is proudly an achiever of Monte Carlo Award (Best Documentary), CNN Young Journalist Award, Lux Awards (Best Serial, Best Writer and Best Director), AASHA Awards (Gender Sensitivity Award), Promax BDA International (Best On Air Promo), National Association of Broadcasters Award (Most Impact in Community), No.1 Satellite TV Network with most viewership and Market Share (Gallup), No.1 Trusted / Popular news source in Pakistan, Brands of the year Award 2008, National Association of Broadcasters Award in 2004, Electronic Mass Media Award in 2004, Certificate International Festival "de television de Monte-Carlo" 2010 and many others. The New York Times termed the plaintiff as "Geo has changed Pakistan's media landscape", which is a great achievement in its true sense.

(Attached herewith are details of the Plaintiff's national and international success, marked as Annexure C)

13. That the plaintiff has adopted and uses a variety of different titles for its ever expanding channels and the programs that are based on unique television concepts and formats, and all such titles, programs and unique concepts are solely associated with the plaintiff. The titles adopted by the plaintiff allow the plaintiff's channels and the programs to be differentiated from others' television channels and aid in the creation of a connection between the plaintiff and the viewers. The titles and slogans used by the plaintiff therefore constitute trademarks and service marks that belong to, and are solely associated with the plaintiff.
14. That the plaintiff has always aimed to bridge the gap that have been created within the Pakistani society and bring people together to the same platform to discuss matters with knowledge, tolerance and integrity through its channels and the programs. The ever expanding operations of the plaintiff catering to all the segments of

the society and addressing to all sorts of issues and the appreciation and acknowledgement earned by the plaintiff on account of plaintiff's initiative can safely be gauged from the fact that the humble beginning of GEO transmission through a single Geo Satellite Channel soon emerged as a family of entertainment and information channels such as GEO News, GEO Super, AAG, etc. Moreover, in order to live up to its reputation to cater masses across the globe the plaintiff, being a visionary organization, has continuously been working in developing themes and contents for its forth coming projects. The plaintiff with its futuristic approach, has secured itself by preferring necessary applications with the competent Government Authorities for registration of brand names / trademarks / service marks under which it has either commenced or intends to launch its operations such as **TEZ, KAHANI, SUPER, AAG, AUR, AWAZ, BOL, PUKAR, SUNNO, ZINDAGI, JEEVAY, BOXER, JEEM, DIN RAAT, JEET KAY GEO** etc. List of Plaintiff's registered trademarks is as under:-

| Sr. No. | Trademark | Classes | Status |
|---------|---------------------------|--------------|-----------------------|
| 1 | GEO | 1 to 45 | Registered |
| 2 | GEO AUR JEENY DO | 9,16,38 & 41 | Registered |
| 3 | GEO SUPER | 9,16,38 & 41 | Registered |
| 4 | GEO PLUS | 9,16,38 & 41 | Registered |
| 5 | GEO BABY | 6 & 38 | Registered |
| 6 | GEO MADAD | 9,16,38 & 41 | Registered |
| 7 | GEO TAIZ | 9,16,38 & 41 | Registered |
| 8 | GEO TEZ | 9,16,38 & 41 | Registered |
| 9 | GEO SUNNO | 9,16,38 & 41 | Registered |
| 10 | GEO FATAFUT | 9,16,38 & 41 | Registered |
| 11 | GEO FM | 9,16,38 & 41 | Registered |
| 12 | GEO TIPS | 9 & 41 | Registered |
| 13 | GEO KAHANI | 9 & 41 | Registered |
| 14 | GEO ZINDAGI | 9 & 41 | Registered |
| 15 | GEO NEWS EXTRA | 9,16,38 & 41 | Registered |
| 16 | MAG WEEKLY | 16 | Registered |
| 17 | BABY T.V. | 16 & 38 | Registered |
| 18 | BOL | 38 & 41 | Accepted / Registered |
| 19 | JEEM | 38 & 41 | Registered |
| 20 | JEET KE GEO | 41 | Registered |
| 21 | SONA CHANDI | 41 | Registered |
| 22 | TEEN AURTEN TEEN KAHANIAN | 41 | Registered |
| 23 | YAQREEN KI WAJAH | 7 & 41 | Registered |
| 24 | MERAY MUTABIQ | 9 & 41 | Registered |

| | | | |
|----|-----------------------|--------------|------------|
| 25 | KARLO JO KARNA HEY | 9 & 41 | Registered |
| 26 | PUKAR | 38 | Registered |
| 27 | HUM AWAAM | 9,16,38 & 41 | Registered |
| 28 | HUM SUB UMEED SE HAIN | 9,16,38 & 41 | Registered |
| 29 | AAG | 1 to 45 | Registered |
| 30 | DILMAIN EIK AAG HAI | 16 | Registered |
| 31 | AUR | 9 & 16 | Registered |
| 32 | AWAZ | 16 & 38 | Registered |
| 33 | BOXER | 9,16,38 & 41 | Registered |
| 34 | JEVAY | 9,16,38 & 41 | Registered |
| 35 | ALMS ONLINE | 36 & 41 | Registered |
| 36 | CHANDA ONLINE | 36 & 41 | Registered |
| 37 | KHAIRAT ONLINE | 36 & 41 | Registered |
| 38 | BARKAT ON LINE | 36 & 41 | Registered |
| 39 | CHARITY ONLINE | 36 & 41 | Registered |
| 40 | SADQA ONLINE | 36 & 41 | Registered |
| 41 | ZAKAT ONLINE | 36 & 41 | Registered |
| 42 | FITRA ONLINE | 36 & 41 | Registered |
| 43 | EIDI ONLINE | 36 & 41 | Registered |
| 44 | DONATION ONLINE | 36 & 41 | Registered |
| 45 | IDOL | 16 & 41 | Registered |
| 46 | PAKISTANI IDOL | 41 | Registered |
| 47 | BAS KAR AWARDS | 9,16,38 & 41 | Registered |
| 48 | DIN RAAT | 9,16,38 & 41 | Registered |

15. That in this regard, the Plaintiff in 2004 began working on a multi-platform media initiative under the banner of **BOL**. The Plaintiff's strategy included the launch of feature length film, newspaper and television channel, which could serve as a voice for the youth and bring forth important issues afflicting our society. **BOL** would be the slogan for raising general awareness through a campaign drawing attention to issues that promote and/or represent disparity and injustice in our society. The theme or the name **BOL** was suggested or selected to convey to the masses that it is their voice that has primacy and they could use **BOL** to raise their voices to bring forth their problems, to seek justice and resolve social, cultural and economic conflicts.
16. That in the course of its business the plaintiff is confronted with day to day challenges that kept it away from practically launching the satellite channel **BOL** despite adoption in the year 2004. However, it was in early 2007 that the Plaintiff's affiliated concern

decided to work in collaboration with a well acclaimed producer and director to create a film to be screened internationally highlighting one of most important and neglected social evil that has virtually ruined many lives. In this pursuit the film under the title **BOL** was penned down, scripted, made and released under an arrangement by the plaintiff and it became a mega hit claimed several awards at national and international level. The secret behind the success of the film **BOL** was the social evil that was the subject highlighted. In order to promote the title **BOL** plaintiff had send millions of rupees that resulted in earning envious goodwill and reputation to the plaintiff. In fact on account of said project **BOL** proved itself as a brand and became synonymous to the plaintiff. The Plaintiff group's film **BOL** remains popular to this day and is frequently broadcast on television and its DVDs continue to be supplied and sold in high numbers throughout the world. Resultantly the name **BOL** has become synonymous to that of the plaintiff and is recognized as such amongst the masses.

(Attached herewith are the copies of marketing and promotional material possessing title/slogan/service mark / trademark **BOL** marked as **Annexure D**)

17. That the Plaintiff is the original creator, developer, adapter, first ever user and proprietor of the title / slogan / trade mark / service mark **BOL** and the plaintiff's rights in respect of the title / slogan / trade mark / service mark **BOL** are well protected under trademark law. The Plaintiff's trademark **BOL** is duly registered vide registration no. 238904 by the Trade Marks Registry, Intellectual Property Organization. The Plaintiff first applied for the registration of the trademark **BOL** in 2004 and the same has also been accepted as No. 195773. In addition thereto, the copyright to the film under title **BOL** is also registered with the Central Copyrights Office, Intellectual Property Organization.

(Trademarks Registration and Application Details Certificate and Copyrights Registration Certificate for **BOL** are attached hereto and marked as **Annexure E-1 to E-2** respectively.)

18. That in light of the foregoing the intellectual property rights associated with the above mentioned title / slogan / trade mark / service mark and the television format / concept are reserved for the exclusive use of the plaintiff only. Moreover, due to the extensive marketing and publishing campaign Plaintiff's title / slogan / trade mark / service mark **BOL**, all the stakeholders and the general public relate it solely to the Plaintiff and no one else.
19. That the reputation and goodwill of trademarks / service marks and companies are no longer territorial and not confined within the national borders of any country, especially with the proliferation of the electronic media. The renown of the trade mark / service mark travels across international borders and obtains an international character. That the plaintiff's channels and programs are viewed across the globe and the plaintiff is considered amongst leading intellectual property exporter in Pakistan. The plaintiff's channels and the programs, slogans, jingles, animations, logos etc. that appear on these channels have become very famous throughout the world. It can therefore undoubtedly be submitted that the film/campaign under the title / slogan / trade mark / service mark **BOL** has acquired global recognition and become a world famous trademark.
20. That it is reiterated that rights in respect of the said trademark / title / brand **BOL** are duly protected to the exclusion of all others under the Intellectual Property laws of the country in favor of the plaintiff and plaintiff being the registered proprietor of the same enjoys the exclusive right to use the same in the course of its business.
21. That plaintiff has just learnt that defendant no. 1 to 4 in active connivance and collusion have incorporated defendant 5 and defendant no. 6 respectively to foster their ulterior motive of usurping the rights of the plaintiff in respect of the registered trademark **BOL**. The malafide on part of the said defendants is further fortified from the fact that defendants, being fully alive and

aware of the proprietary rights of the plaintiff in respect of trademark BOL have vouched to join hands under the veil of incorporation while using the name and style as **BOL News (Private) Limited** and / or **BOL Entertainment (Private) Limited**. It is thus safe to state that said defendants are acting with an aim to defeat the statutory rights of the plaintiff in its registered trademark **BOL** through sheer abuse of due process of law. The facts of the case establish beyond any iota of doubt that defendants are making all out efforts to secure and/or procure rights for defendant no. 8, who is a subsidiary of a foreign company that holds more than 90% shares in said defendant no. 8. It is worth noting that earlier the Plaintiff upon learning that Defendant no. 7 to defendant no. 9, in mutual connivance and collusion are illegally and unjustly attempting to misappropriate its registered trademark / service mark **BOL**, initiated a legal action before the competent court of law at Lahore for redress of its grievance and the learned Court, taking cognizance in the matter, has passed an ad-interim injunction order against the said defendants.

(Attached hereto are certified copies of Court order, Form 29, Memorandum of Association & Articles of Association of Defendant No 5 and 6 marked as Annexure F)

22. That plaintiff has also learnt through reliable sources that defendants have changed the name of their television channel from **LABAIK** to **BOL NEWS** and allegedly acquired the rights by negating compliances of mandatory statutory provisions.
23. The Defendant No. 8 which appears to be the undocumented sponsor of the initiative has launched a marketing campaign falsely claiming to be launching a satellite channel under the name **BOL**, in sheer violation of the Plaintiff's rights. It is worth mentioning that defendant no. 8, a company having foreign ownership, is falsely alleging and baselessly claiming to be proprietor by trademark / service mark **BOL** as said company has also filed several applications for registration of said trademark before the authority despite of specific knowledge of plaintiff's proprietary rights in **BOL** simply to frustrate the said rights of the

plaintiff through abuse of due process of law. As such any or all efforts on part of Defendants either alone or in collusion with each others are malafide and prejudicial to commercial and proprietary rights of the Plaintiff in its well established brand / title / name / trademark **BOL** and are liable be declared unfair and based upon bad faith.

(Attached hereto are proofs of Defendants infringing use of trademark **BOL** and search report marked as **Annexure G** and **H** respectively)

24. That it is worth mentioning at this pointed out that Defendant No.8 which is actively publicizing the yet to be launched channel and claiming to be the sponsor of the said channel, is majority owned by a foreign company, as aforesaid which would bar said company from obtaining a license under Section 25 of the PEMRA Ordinance. This clearly establishes that the Defendants are attempting to circumvent the statute through active collusion and through abuse of due process of law. It may also be pointed out that the broadcasting license granted by Defendant No. 9 makes it obligatory upon the licensee i.e. Defendants, either jointly or severally to abide by the laws of the country, including but not limited to the Trademarks Ordinance, 2001. Thus, under the relevant provisions of the said enactment the use of **BOL** by defendants, jointly or severally, either as a trademark or as a trade name is in breach of the exclusive proprietary rights of the plaintiff hence, illegal making it incumbent upon defendant no. 9 to cancel any such license.

(Attached hereto is the List of satellite TV license issued by Pemra marked as **Annexure I**)

25. That the Defendants are illegally trading upon the Plaintiff's hard earned goodwill by malafidely copying and imitating its trade mark / service mark **BOL**. The Defendant's action are an offence under the law and the sole intention of the Defendants is to en-cash the Plaintiff's goodwill and to trade on the fame and repute of the Plaintiff's distinctive title / slogan / trade mark / service mark which can simply be fortified from the fact that defendants had before them a wide open field to choose its name from but said

defendants remained adamant to use illegally the name/brand of the plaintiff. That the Defendants are aiming to broadcast their channel by circumventing and misappropriating the goodwill and reputation. The Defendants' actions are likely to cause grave injury to the Plaintiff and wipe out the years of work, resources and energy spent by the Plaintiff in the development of **BOL** as a cross-platform media initiative.

26. That the Defendants actions are in in clear negation of the statutory provisions, as stipulated in Section 39, and Section 40 of Trade Marks Ordinance 2001 as well in breach of Section 54 of the Copyright Ordinance 1962, as Defendants are infringing the proprietary rights of the Plaintiff. The illegal acts of the Defendant are more than likely to cause severe loss to the Plaintiff and said act will result in diluting the goodwill and reputation of the Plaintiff as the Defendant has exactly imitated the title / slogan / trade mark / service mark **BOL** of the plaintiff's, which was developed, introduced and first adopted by the Plaintiff only in the year 2004. Furthermore the exact nature of the business shall only diminish the reputation of the Plaintiff further. The acts of the Defendant are inexcusable under the law and a bare indication of fraud, unfair competition and passing off, as such Defendants are liable to be restrained.

27. That unless the Defendants are immediately restrained, the Plaintiff shall be gravely injured and its reputation and goodwill will be left in tatters, thereby drastically diminishing its ability to conduct its business. The aforesaid illegal trade and business activities on part of the Defendants have already caused substantial losses to the business of the Plaintiff and damaged the reputation of the Plaintiff. In addition thereto, the said acts on part of the Defendants are bound to dilute the Plaintiff's exclusive right which is leading to grave business and opportunity losses to the Plaintiff. The Plaintiff estimates this loss of business and opportunity loss to be in the tune of Rs. 500 Million and the Defendant is liable to compensate the Plaintiff for the said loss under the law.

8. That there exists no standard for ascertaining the actual damage caused or likely to be caused to the Plaintiff by the aforesaid invasion at the hands of the Defendants and that no pecuniary compensation would afford adequate relief on account of such invasion. Therefore, under the circumstances, it is necessary, essential, expedient and in the best interest of justice that the Defendants and/or any person or persons including his agents, servants, associates, and all persons claiming through or under the Defendants be permanently restrained from doing any illegal act inclusive of creating, making, producing, broadcasting and / or marketing and advertising the program under the imitated trade mark **BOL** and / or any deceptively similar and identical variation thereof in any manner whatsoever.
29. That it is submitted that the Plaintiff has, and continues to, suffer irreparable losses in the form of harm done to its goodwill and repute, occasioning as a result of the continued infringement of the plaintiff's title / slogan / trade mark / service mark **BOL** by the Defendant, running the program on air under the imitated trademark **BOL**, which is irreparable in nature as such Defendant is liable to be restrained from aforesaid illegal business and unfair competition.
30. That the cause of action for the titled Suit arose in 2nd week of November 2013, when the Plaintiff learnt about the incorporation of defendant no. 5 and 6 by other defendants illegally and unjustifiably under the plaintiff's duly registered trade mark / service mark **BOL** and said cause is recurring in nature and continues unabated.
31. That the cause of action has accrued at Karachi where plaintiff and defendants are residing and carrying on their respective businesses as such this Honourable Court possesses the jurisdiction to try the instant suit.

32. That for the purposes of Court Fee, Jurisdiction, Injunction and damages, the suit is valued at Rs. 500 Million and requisite Court Fee is affixed hereto.

PRAYER


That in view of the foregoing the Plaintiff most humbly prays for a decree in favor of Plaintiff and against the Defendants for:

- a. Permanent injunction restraining defendants either jointly or severally from setting up, owning, establishing, operating and / or running television station or other station involving the use of the satellite, cable, internet, dish, MMDS, direct to home, receivers or any other means of telecasting either themselves and/or through any other television station or stations in or outside Pakistan and/or to open any channel and/or to air any program under the name and style as **BOL** in any manner whatsoever.
- b. Permanent injunction restraining the Defendants either jointly or severally, their agents, men and representatives from using the trademark / service mark **BOL** in the course of their business and from marketing, selling, promoting and/or offering for sale their goods or services by infringing / imitating / counterfeiting the Plaintiff's registered trademark **BOL** and / or any intellectual property belonging to the Plaintiff in any manner whatsoever.
- c. Permanent injunction against defendant no. 1 to 4 thereby restraining said defendants from using, adopting, marketing and /or from carrying on any commercial activity, either jointly or severally, under the trading style / trade name / company name **BOL** in any manner and for any purposes whatsoever.
- d. A declaration that act of adoption and / or use of trademark / service mark **BOL** either alone or in conjunction with any other word or feature or device including filing of applications for registration by the defendants for the purposes of telecasting

and/or establishing television channel is an act of unfair competition hence illegal.

- e. Permanent injunction restraining the Defendants their agents, men and representatives from entering into or carrying out any act of unfair competition in any manner whatsoever.
- f. Directing the Defendant to furnish detail account of sales and profits made through the use of the infringing / imitated trademark / service mark BOL and to furnish payments to the Plaintiff equating to said revenue.
- g. Directing the Defendant to pay a sum of Rs. 500 million as token of compensation for causing loss of business and opportunities to the plaintiff.
- h. Any other relief or relief(s) which this Honorable Court deems fit and proper under the circumstances of the case.
- i. Cost of suit may also be awarded.

Karachi
Dated:



PLAINTIFF


ADVOCATE FOR THE PLAINTIFF

VERIFICATION

I, Mr. Mansoor Rehman S/o Mr. Ata-ur-Rehman, adult, Muslim, resident of House No. 31/C, Street No. 05, Block -2, Karachi Administration Housing Society, Karachi do hereby verify of oath that the contents of para 1 to para 29 are true to the best of my information and from 30 to 32 are based upon advise which I believe to be correct.


ASSISTANT REGISTRAR-II
AFFIDAVIT & IDENTITY RE-ANCH
HIGH COURT OF SINDH



DEPONENT

CNIC No: **42301-8238836-5**

Cell No: **0300-2300457**

Identified by me.

ADVOCATE

Reg. No: **4572/HC/KHI**

Phone No: **0300-2300457**

Solemnly affirmed before me on this _____ day of November 2013, by the deponent, above named who is identified to me by Mirza Mehmood Baig Advocate, who is known to me personally.

COMMISSIONER FOR TAKING AFFIDAVITS

9/1
ASSISTANT REGISTRAR-II
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH

Documents filed:

Annexure A to Annexure I

Documents relied upon:

Originals of the above and / or all others documents deemed essential and necessary after framing of issues.

Address of the parties:

As mentioned in the title of the suit.

Address of Advocate
for service.

ALI & ASSOCIATES
6-Shaheen Towers, 23-A,
Block-6, P.E.C.H.S.,
Shahrah-e-Faisal,
Karachi

Drafted by me:

Advocate

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No: 146/ of 2013

Independent Media Corp. Pvt Ltd

PLAINTIFF

VERSUS

Shoaib Ahmed Sheikh and others

DEFENDANT

AFFIDAVIT IN SUPPORT OF VERIFICATION OF PLAINT

Mr. Mansoor-ur-Rehman Son of Atta-ur-Rehman, resident of House No. C-31 Block II Street No. 5 Adminstration H.S. Karachi, affirmed on oath before me at Karachi on this 19-NOV-2013 in the 'Identity Section' of this court.

ASSISTANT REGISTRAR-II
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH

Photograph of Deponent



Signature of Deponent

CNIC: 42201-8238636-5

Cell No. 0300-2300457

☒ Original CNIC verified by Bar Code Reader

☒ Photo taken at I.S.

☒ Biometric Attendance done at I.S.

Video recording done at I.S.

☒ CNIC verified through NADRA

Finger Prints verified through NADRA



Electronic Finger Print taken at I.S.

COMMISSIONER FOR TAKING AFFIDAVIT

Tag ID: 19111334330

No. of Affidavit : 1/3

Cost received : Rs. 30

Printed on: 19-NOV-2013 at 09:51 am

(AMMENDED TITLE)

IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 1461 / 2013

Presented on 20/11/13

Assistant Registrar (D-10)

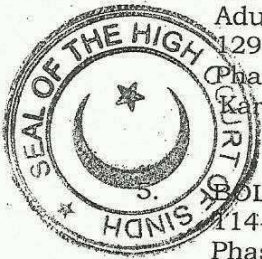
INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED

(A company incorporated under
The Companies Ordinance 1984)
Having its principle place of business
At Printing House, I. I. Chundrigar Road,
Karachi

(Through its authorized signatory) Plaintiff

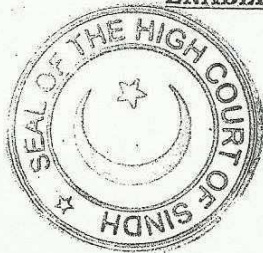
Versus

1. Shoaib Ahmed Sheikh S/o Bashir Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
2. Ayesha Shoaib Sheikh W/o Shoaib Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
3. Vikas Atiq S/o Atiq-ur-Rehman
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
4. Mrs. Sarwat Bashir W/o Viqas Atiq
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
5. BOL News (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi
6. BOL Enterprises (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi



7. Labbaik (Private) Limited
(A company incorporated under
The Companies Ordinance 1984)
(Through its Chief Executive/Directors)
Having its principle place of business
at C-47, 16th Commercial Street,
Phase-II, DHA,
Karachi
 8. Axact (Private) Limited
(a Pakistani company)
Through its Chief Executive / Directors/Secretary)
Of 114-116, Jami Commercial Street,
Phase-II, DHA,
Karachi
 9. Pakistan Electronic Media Regulatory Authority
Through its Chairman
Having place of business at
Mauve Area,
Islamabad
 10. Securities & Exchange Commission of Pakistan
Company Registration Office
State Life Building-2, 4th Floor
North Wing. Wallace Road,
Karachi
- Defendants

**SUIT FOR PERMANENT INJUNCTION, DAMAGES & RENDITION
OF ACCOUNTS AGAINST INFRINGEMENT OF TRADEMARK,
PASSING OFF AND UNFAIR COMPETITION UNDER THE
TRADEMARKS ORDINANCE 2001 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW**



ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1461 of 2013

Date

Order with signature of Judge

1. For orders on CMA No.12774/13 (if granted)
2. For orders on CMA No. 12775/13 (U/S 94 R/w Order 39 R 1&2 CPC)

19.11.2013.

Mr. Khurram Gul Ghori, Advocate for plaintiff.

- 1). Urgency granted.
- 2). Learned counsel for the plaintiff may file amended title making S.E.C.P. defendant in this matter within three days and once the S.E.C.P. has been made defendant notice also to the said commission.

Notice to the defendants for 26th Nov. 2013. Till the next date ad-interim order is granted as prayed but subject to the condition that any use of the word "BOL" by defendant Nos.5 and 6 solely by virtue of the fact that such word is part of the company name of each of these defendants, and such company name is being used for any of the purposes or requirements of the Companies Ordinance shall not constitute a violation of the order made today. Learned counsel is put on notice that this interim order must be extended specifically on each date of hearing.

Judge

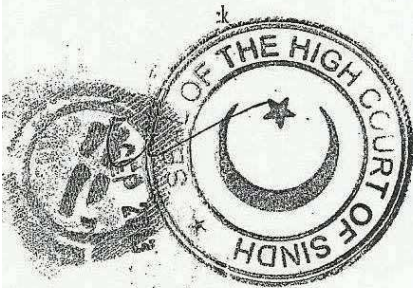


EXHIBIT B

ESTTA Tracking number: **ESTTA610737**

Filing date: **06/18/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | Independent Media Corporation (PVT.) LTD |
| Granted to Date of previous extension | 06/18/2014 |
| Address | Printing House I. Chundrigar Road Karachi, PAKISTAN |

| | |
|-------------------------|---|
| Domestic Representative | Harold L Novick Novick, Kim & Lee, PLLC Suite 320 Vienna, VA 22182 UNITED STATES docket@nkllaw.com, hnovick@nkllaw.com Phone: 7035468554 |
|-------------------------|---|

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 86003454 | Publication date | 02/18/2014 |
| Opposition Filing Date | 06/18/2014 | Opposition Period Ends | 06/18/2014 |
| Applicant | BOL ENTERPRISE (PVT.) LIMITED 114-116 C, Jami Commercial Street # 13, Karachi, PAKISTAN | | |

Goods/Services Affected by Opposition

| |
|---|
| <p>Class 038. First Use: 0 First Use In Commerce: 0</p> <p>All goods and services in the class are opposed, namely: Audio and video broadcasting services over the Internet; Broadcast of cable television programmes; Broadcasting of radio programmes; Broadcasting of television programmes; Broadcasting services and provision of telecommunication access to films and television programmes provided via a video-on-demand service; Broadcasting services, namely, transmission of advertising programs and media advertising communications via digital communications networks; Electronic transmission of voice, data and images by television and video broadcasting; Internet broadcasting services; Satellite television broadcasting; Satellite transmission services, television and radio broadcasting services; Simulcasting broadcast television over global communication networks, the Internet and wireless networks; Subscription television broadcasting; Video broadcasting and transmission services via the Internet, featuring films and movies; Video broadcasting services via the Internet; Wireless broadcasting</p> |
| <p>Class 041. First Use: 0 First Use In Commerce: 0</p> <p>All goods and services in the class are opposed, namely: Audio production services, namely, creating and producing ambient soundscapes, and sound stories for museums, galleries, attractions, podcasts, broadcasts, websites and games; Education services, namely, providing hands-on opportunities for children in the field of intuitive engineering through live, broadcast, and on-line classes, seminars, workshops, training and curriculum development for children, parents and educators; Entertain-</p> |

ment in the nature of an ongoing special variety, news, music or comedy show featuring current affairs broadcast over television, satellite, audio, and video media; Entertainment services, namely, organizing and conducting an array of athletic events rendered live and recorded for the purpose of distribution through broadcast media; Entertainment, namely, a continuing variety show broadcast over television, satellite, audio, and video media; News syndication for the broadcasting industry


Grounds for Opposition

| | |
|---|---|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |

Marks Cited by Opposer as Basis for Opposition

| | | | |
|------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Design Mark | | | |
| Goods/Services | audio and video broadcasting services; electronic transmission of voice, data and images by television and video broadcasting; satellite transmission services; simulcasting broadcast television; television broadcasting; video broadcasting services via the internet in Class 038; entertainment in the nature of an ongoing show broadcast over television, satellite, audio, and video media; entertainment services of organizing and conducting an array of events rendered live and recorded for the purpose of distribution through broadcast media; entertainment, namely, a continuing show broadcast over television, satellite, audio, and video media; education services provided through broadcast and on-line classes in Class 041. | | |
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |

| | |
|----------------|--|
| Word Mark | BOL |
| Goods/Services | :audio and video broadcasting services; electronic transmission of voice, data and images by television and video broadcasting; satellite transmission services; simulcasting broadcast television; television broadcasting; video broadcasting services via the internet in Class 038; entertainment in the nature of an ongoing show broadcast over television, satellite, audio, and video media; entertainment services of organizing and conducting an array of events rendered live and recorded for the purpose of distribution through broadcast media; entertainment, namely, a continuing show broadcast over television, satellite, audio, and video media; education services provided through broadcast and on-line classes in Class 041. |

| | | | |
|----------------------|---|-----------------------|------------|
| U.S. Application No. | 86288431 | Application Date | 05/21/2014 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | BOL | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 041. First use: First Use: 0 First Use In Commerce: 0 Entertainment services in the nature of television talent show, musical performances, and the production of radio and television programmes | | |

| | |
|-------------|---|
| Attachments | BOL Urdu Drawing (resized3).jpg 86288431#TMSN.jpeg(bytes) NOTICE OF OPP by IMC filed HN2.pdf(87322 bytes) Suit 1461 of 2013 (BOL) Plaint2.pdf(1759502 bytes) Pak Injunction Order.pdf(1000401 bytes) |
|-------------|---|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------------|
| Signature | /Harold L Novick/ |
| Name | Harold L Novick |
| Date | 06/18/2014 |

STATEMENT OF OPPOSITION

1. Opposer since prior to Applicant's filing date of its Intent To Use application of July 6, 2013 adopted and continuously used in commerce the stylized mark BOL in the Urdu language ("Urdu BOL Mark") for, inter alia, movies and films, and pre-recorded CD's, video tapes, laser disks and DVDs featuring social drama in Class 9.

2. Opposer since prior to Applicant's filing date of its Intent To Use application of July 6, 2013 adopted and continuously used in commerce the stylized mark BOL in the Urdu language ("Urdu BOL Mark") for, inter alia, audio and video broadcasting services over the internet; broadcasting services; electronic transmission of voice, data and images by television and video broadcasting; satellite transmission services; subscription television broadcasting; video broadcasting services via the internet, and wireless broadcasting in Class 038.

3. Opposer since prior to Applicant's filing date of its Intent To Use application of July 6, 2013 adopted and continuously used in commerce the Urdu BOL Mark for entertainment in the nature of an ongoing special variety, news, music or comedy show featuring current affairs broadcast over television, satellite, audio, and video media; entertainment services, namely, organizing and conducting an array of athletic events rendered live and recorded for the purpose of distribution through broadcast media; entertainment, namely, a continuing variety show broadcast over television, satellite, audio, and video media; education services, inter alia, provided through broadcast and on-line classes in Class 041

4. Transliteration of Opposer's Urdu BOL Mark is "BOL," and the English translation is speak; and the transliteration of Applicant's Urdu mark is "BOL," and the English translation is speak, which is identical to that of Opposer's Urdu BOL Mark.

5. Opposer is in the process of filing a trademark application for its Urdu BOL Mark for its services in Classes 38 and 41 under Section 1(a) in the U.S. Patent and Trademark Office.

6. Opposer has enjoyed and continues to enjoy substantial success in the promotion of its Class 38 Services bearing its Urdu BOL Mark, which have been continuously promoted, advertised, and provided throughout the United States and in other countries throughout the world where United States citizens travel.

7. Opposer has enjoyed and continues to enjoy substantial success in the promotion of its Class 41 Services bearing its Urdu BOL Mark, which have been continuously promoted, advertised, and provided throughout the United States and in other countries throughout the world where United States citizens travel.

8. Opposer has expended substantial sums to advertise and promote its Class 38 and Class 41 services, and the customers thereof constitute a significant number of persons who are located throughout the United States.

9. By virtue of its provision, and of its advertising and promotional expenditures for

its services, Opposer's Urdu BOL Mark has become well and favorably known to the viewing and listening public, and to the public in general as an indication of origin of Opposer's Class 38 Services, and by the viewing and listening public as an indication of origin of Opposer's Class 41 services.

10. By virtue of its advertisement and promotion of its Urdu BOL Mark, Opposer has built up extensive good will and consumer recognition of its Urdu BOL mark.

11. Applicant's proposed BOL mark is in Urdu, and is identical to Opposer's Urdu BOL mark, and thus is confusingly similar thereto.

12. Because of the similarity of Applicant's proposed mark to Opposer's Urdu BOL Mark, confusion, mistake or deception of the public and purchasers and users or prospective purchasers and users is not only likely, but inevitable.

13. Applicant's services are intended to be provided to the same class of customers as are Opposer's Class 38 and Class 41 Services.

14. Applicant's services are intended to be provided in the same channels of trade as are Opposer's Class 38 and Class 41 services.

15. Applicant's intended services are related to Opposer's Class 38 and Class 41 services.

16. There is likelihood that when Applicant does use its proposed mark in connection with its services it will cause confusion, or cause mistake, or deceive.

17. If Applicant were to use its proposed mark in connection with its intended services, there is a likelihood that consumers and users and prospective consumers and users of Opposer's services in connection with its Urdu BOL Mark would believe that Opposer produced or sponsored those services or was in some way connected with Applicant.

18. Opposer, because of its earlier use in commerce, has superior rights to the Urdu BOL Mark than Applicant.

19. Should Applicant obtain a registration for its mark, such registration would damage the rights of Opposer because such registration would interfere with Opposer's rights in its Urdu BOL Mark, and would provide Applicant with prima facie evidence of the validity of a mark which is likely to cause confusion, to cause mistake or to deceive in view of Opposer's Urdu BOL Mark.

20. Registration of Applicant's mark thus will damage and injure Opposer within the meaning of the Trademark Act.

21. Applicant has applied for registration of its mark in bad faith and its declaration supporting its application is false and fraudulent because Applicant knew of Opposer's prior

rights when Applicant executed its application's declaration.

22. Opposer brought a suit against Applicant in Pakistan for, inter alia, trademark infringement of Opposer's Pakistani registered mark BOL in standard characters, and was granted a world-wide preliminary injunction against Applicant. That decision should be taken into consideration here since Opposer's Urdu BOL Mark and Applicant's proposed mark are both transliterated as BOL. A copy of the Pakistani complaint is attached hereto as Exhibit 1 and is incorporated herein by reference, and a copy of the injunction Order restraining Applicant is attached hereto as Exhibit 2, and is incorporated herein by reference.

WHEREFORE, Opposer prays that this Opposition be sustained, that the mark of Applicant be refused and denied registration, and that the application by Applicant be rejected; and prays for such other and further relief as the Board deems appropriate.

(AMMENDED TITLE)
IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 1461 / 2013

Presented on 20/11/13

[Signature]
Assistant Registrar (D-III)

INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED

(A company incorporated under
The Companies Ordinance 1984)
Having its principle place of business
At Printing House, I. I. Chundrigar Road,
Karachi
(Through its authorized signatory)

Plaintiff

Versus

1. Shoaib Ahmed Sheikh S/o Bashir Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
2. Ayesha Shoaib Sheikh W/o Shoaib Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
3. Vikas Atiq S/o Atiq-ur-Rehman
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
4. Mrs. Sarwat Bashir W/o Vikas Atiq
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
5. BOL News (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi
6. BOL Enterprises (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi

7. Labbaik (Private) Limited
(A company incorporated under
The Companies Ordinance 1984)
(Through its Chief Executive/Directors)
Having its principle place of business
at C-47, 16th Commercial Street,
Phase-II, DHA,
Karachi
8. Axact (Private) Limited
(a Pakistani company)
Through its Chief Executive / Directors/Secretary)
Of 114-116, Jami Commercial Street,
Phase-II, DHA,
Karachi
9. Pakistan Electronic Media Regulatory Authority
Through its Chairman
Having place of business at
Mauve Area,
Islamabad
10. Securities & Exchange Commission of Pakistan
Company Registration Office
State Life Building-2, 4th Floor
North Wing, Wallace Road,
Karachi

Defendants

**SUIT FOR PERMANENT INJUNCTION, DAMAGES & RENDITION
OF ACCOUNTS AGAINST INFRINGEMENT OF TRADEMARK,
PASSING OFF AND UNFAIR COMPETITION UNDER THE
TRADEMARKS ORDINANCE 2001 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW**


The Plaintiff most respectfully submits as under:

1. That the Plaintiff is Private Limited Company duly incorporated under the Companies Ordinance 1984, having its place of business at Printing House, I. I. Chundrigar Road, Karachi, and the titled Suit has been filed by the Plaintiff through Mr. Mansoor Rehman S/o Ata-ur-Rehman, authorized officer of the company duly empowered to act on behalf of the Plaintiff.

(Attached herewith is the copy of Board
Resolution marked as Annexure A)

Karachi.

Dated: 19-11-2013


Advocate for the Plaintiff

IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 1461 / 2013

Presented on 19/11/13

INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED

(A company incorporated under
The Companies Ordinance 1984)
Having its principle place of business
At Printing House, I. I. Chundrigar Road,
Karachi

(Through its authorized signatory) Plaintiff

Versus

- 16507
1. Shoaib Ahmed Sheikh S/o Bashir Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
 2. Ayesha Shoaib Sheikh W/o Shoaib Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
 3. Vikas Atiq S/o Atiq-ur-Rehman
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
 4. Mrs. Sarwat Bashir W/o Viqas Atiq
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
 5. BOL News (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi

- 5
6. BOL Enterprises (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi
 7. Labbaik (Private) Limited
(A company incorporated under
The Companies Ordinance 1984)
(Through its Chief Executive/Directors)
Having its principle place of business
at C-47, 16th Commercial Street,
Phase-II, DHA,
Karachi
 8. Axact (Private) Limited
(a Pakistani company)
Through its Chief Executive / Directors/Secretary
Of 114-116, Jami Commercial Street,
Phase-II, DHA,
Karachi
 9. Pakistan Electronic Media Regulatory Authority
Through its Chairman
Having place of business at
Mauve Area,
Islamabad

..... Defendants

**SUIT FOR PERMANENT INJUNCTION, DAMAGES & RENDITION
OF ACCOUNTS AGAINST INFRINGEMENT OF TRADEMARK,
PASSING OFF AND UNFAIR COMPETITION UNDER THE
TRADEMARKS ORDINANCE 2001 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW**

The Plaintiff most respectfully submits as under:

1. That the Plaintiff is Private Limited Company duly incorporated under the Companies Ordinance 1984, having its place of business at Printing House, I. I. Chundrigar Road, Karachi, and the titled Suit has been filed by the Plaintiff through Mr. Mansoor Rehman S/o Ata-ur-Rehman, authorized officer of the company duly empowered to act on behalf of the Plaintiff.

(Attached herewith is the copy of Board
Resolution marked as Annexure A)

2. That the Plaintiff is a leading television broadcaster and a member of the Jang Group, Pakistan's leading media conglomerate. The group launched Pakistan's first 24-hour satellite television channel **GEO** and now operates a number of different channels, which collectively have the highest viewership in the country and are also popular throughout the world. The group also publishes a number of newspapers and magazines including **Daily Jang**, which is the largest circulating newspaper in Pakistan and the most widely read Urdu Newspaper in the world. The Plaintiff is a creator, developer, producer and broadcaster of news, television shows, entertainment programs, drama serials, sporting events, documentaries, music, etc and operates a number of television channels.

(Attached herewith is the copy of
Company Profile marked as Annexure B)

3. That the Plaintiff started its first transmission on August 2002 and was the first South Asian Urdu language channel out of Pakistan to provide content comparable with world class television broadcasters. The plaintiff's success can easily be gauged from the fact that the plaintiff's channel achieved 99% reach on C&S footprint in Pakistan within two weeks of its test signal launch and became the highest rated C&S channel of Pakistani origin within the first quarter of its launch.
4. That it will be well in consonance with the facts and circumstances of the case that starting as a single multi-dimensional channel in the year 2002, the Plaintiff's determination and hard work resulted in a stable and gradual increase in the business. By proficiently catering to viewer's requirements and demands, the Plaintiff has achieved significant milestones in relatively short span of time. The Plaintiff and its affiliated concerns broadcast / transmit a number of different channels in the Entertainment, News, Sports and Youth Programming genres, namely **GEO NEWS**, **GEO ENTERTAINMENT**, **GEO SUPER**, **GEO KAHANI** and **GEO TEZ** in Pakistan and internationally. Moreover, the Plaintiff's 24-hours news channel **GEO NEWS** achieved 100% penetration of C&S footprint in Pakistan within ten days of its launch, which is not less than a history in itself.

5. That it is equally important to state here that the plaintiff has emerged not only as one of the leading makers / producers / broadcasters of television programs being broadcasted through its different channels that includes entertainment, sports, youth programs, news coverage etc. at the international level but at the same time has established most dynamic alliance with its viewers by providing them with an unparalleled of programing and providing access to vital information.
6. That due to its extensive news coverage of up-to date national and international affairs, reports, debates, discussions, live coverage of national and international mega events and programs over current affairs, the plaintiff is regarded as the first hand comprehensive and reliable source of information for public at large which people have learnt to rely upon over a period of time. That in addition thereto, the plaintiff has also earned immense popularity and envious goodwill for other musical, dramatic, fictional, sports and documentary programs being broadcasted on the above mentioned channels of the plaintiff.
7. That it goes without saying that the plaintiff has secured immense goodwill all around the World as the plaintiff's channels are not only broadcasted in Pakistan but in almost every part of the World including Middle East, USA, Canada, Australia, UK and Europe. The plaintiff has acquired huge popularity and is being recognized by people of all ages due to its distinctive, peculiar and specific color scheme, lettering style and logo and said trademark/service mark and has secured loyal viewership of its channels.
8. That it is important to mention here that the Plaintiff has spent substantial amount of time, money and labor on creating, developing, producing, marketing and broadcasting its programs that include, but are not limited to, news, entertainment, sports, reality shows etc. on different channels of the plaintiffs which are highly liked by its millions of fans and viewers all around the World. The fan following of the plaintiff's channels can be easily gauged from the fact that the plaintiff's pages, individually of each

u

channel, on social networks like Face book and Twitter are 'liked' by more than half a million users, which is a very strong evidence of plaintiff's success.

9. That it is worth mentioning here that the plaintiff has the largest news gathering infrastructure with the largest network of reporters in Pakistan. In addition thereto, the correspondents and news reporters of the plaintiff are spread all over the World to cover each and every important news, report, debate, discussion and event happening anywhere around the World. The Plaintiff also has a dedicated Market Research and Product Development Wing to support news and entertainment channel content, which is highly valued and appreciated by the world wide viewers of the plaintiff.
10. That the plaintiff employs world class standards and latest cutting edge technology for the coverage, broadcasting and its day to day media operations. The plaintiff has fully automated newsroom and play-out system in line with the latest international standards in this field. In addition thereto, the plaintiff has 100% digital platform being managed by a best of breed content management system. Furthermore, the plaintiff has used wireless cameras and remote controlled cameras to cover mega events nationally and internationally, which positions it in the group of top media broadcasters of the World.
11. That the plaintiff plays a significant role in the employment sector of this developing nation and heavily invests extensive amounts on the recruitment and training of its staff / employees. The plaintiff has hired over 2500 of Pakistan's best Media talent at each level of the organization whose hard work and dedication is quite discernable from the current standing of the plaintiff's company from each and every angle. The plaintiff is very proud of the fact that the top management and second level of line managers of the plaintiff has media management experience of close to 300 years which makes them extremely valuable assets of the company and the plaintiff duly acknowledges that.

12. That the Plaintiff without a doubt represents the pinnacle of success borne to fruition through hard work and dedication. The plaintiff has achieved number of prestigious Awards since its inception, thus setting its own league and being an admiration for the others to follow. The plaintiff is proudly an achiever of Monte Carlo Award (Best Documentary), CNN Young Journalist Award, Lux Awards (Best Serial, Best Writer and Best Director), AASHA Awards (Gender Sensitivity Award), Promax BDA International (Best On Air Promo), National Association of Broadcasters Award (Most Impact in Community), No.1 Satellite TV Network with most viewership and Market Share (Gallup), No.1 Trusted / Popular news source in Pakistan, Brands of the year Award 2008, National Association of Broadcasters Award in 2004, Electronic Mass Media Award in 2004, Certificate International Festival "de television de Monte-Carlo" 2010 and many others. The New York Times termed the plaintiff as "Geo has changed Pakistan's media landscape", which is a great achievement in its true sense.

(Attached herewith are details of the Plaintiff's national and international success, marked as Annexure C)

13. That the plaintiff has adopted and uses a variety of different titles for its ever expanding channels and the programs that are based on unique television concepts and formats, and all such titles, programs and unique concepts are solely associated with the plaintiff. The titles adopted by the plaintiff allow the plaintiff's channels and the programs to be differentiated from others' television channels and aid in the creation of a connection between the plaintiff and the viewers. The titles and slogans used by the plaintiff therefore constitute trademarks and service marks that belong to, and are solely associated with the plaintiff.
14. That the plaintiff has always aimed to bridge the gap that have been created within the Pakistani society and bring people together to the same platform to discuss matters with knowledge, tolerance and integrity through its channels and the programs. The ever expanding operations of the plaintiff catering to all the segments of

the society and addressing to all sorts of issues and the appreciation and acknowledgement earned by the plaintiff on account of plaintiff's initiative can safely be gauged from the fact that the humble beginning of GEO transmission through a single Geo Satellite Channel soon emerged as a family of entertainment and information channels such as GEO News, GEO Super, AAG, etc. Moreover, in order to live up to its reputation to cater masses across the globe the plaintiff, being a visionary organization, has continuously been working in developing themes and contents for its forth coming projects. The plaintiff with its futuristic approach, has secured itself by preferring necessary applications with the competent Government Authorities for registration of brand names / trademarks / service marks under which it has either commenced or intends to launch its operations such as **TEZ, KAHANI, SUPER, AAG, AUR, AWAZ, BOL, PUKAR, SUNNO, ZINDAGI, JEEVAY, BOXER, JEEM, DIN RAAT, JEET KAY GEO** etc. List of Plaintiff's registered trademarks is as under:-

| Sr. No. | Trademark | Classes | Status |
|---------|---------------------------|--------------|-----------------------|
| 1 | GEO | 1 to 45 | Registered |
| 2 | GEO AUR JEENY DO | 9,16,38 & 41 | Registered |
| 3 | GEO SUPER | 9,16,38 & 41 | Registered |
| 4 | GEO PLUS | 9,16,38 & 41 | Registered |
| 5 | GEO BABY | 6 & 38 | Registered |
| 6 | GEO MADAD | 9,16,38 & 41 | Registered |
| 7 | GEO TAIZ | 9,16,38 & 41 | Registered |
| 8 | GEO TEZ | 9,16,38 & 41 | Registered |
| 9 | GEO SUNNO | 9,16,38 & 41 | Registered |
| 10 | GEO FATAFUT | 9,16,38 & 41 | Registered |
| 11 | GEO FM | 9,16,38 & 41 | Registered |
| 12 | GEO TIPS | 9 & 41 | Registered |
| 13 | GEO KAHANI | 9 & 41 | Registered |
| 14 | GEO ZINDAGI | 9 & 41 | Registered |
| 15 | GEO NEWS EXTRA | 9,16,38 & 41 | Registered |
| 16 | MAG WEEKLY | 16 | Registered |
| 17 | BABY T.V. | 16 & 38 | Registered |
| 18 | BOL | 38 & 41 | Accepted / Registered |
| 19 | JEEM | 38 & 41 | Registered |
| 20 | JEET KE GEO | 41 | Registered |
| 21 | SONA CHANDI | 41 | Registered |
| 22 | TEEN AURTEN TEEN KAHANIAN | 41 | Registered |
| 23 | YAQREEN KI WAJAH | 7 & 41 | Registered |
| 24 | MERAY MUTABIQ | 9 & 41 | Registered |

| | | | |
|----|-----------------------|--------------|------------|
| 25 | KARLO JO KARNA HEY | 9 & 41 | Registered |
| 26 | PUKAR | 38 | Registered |
| 27 | HUM AWAAM | 9,16,38 & 41 | Registered |
| 28 | HUM SUB UMEED SE HAIN | 9,16,38 & 41 | Registered |
| 29 | AAG | 1 to 45 | Registered |
| 30 | DILMAIN EIK AAG HAI | 16 | Registered |
| 31 | AUR | 9 & 16 | Registered |
| 32 | AWAZ | 16 & 38 | Registered |
| 33 | BOXER | 9,16,38 & 41 | Registered |
| 34 | JEVAY | 9,16,38 & 41 | Registered |
| 35 | ALMS ONLINE | 36 & 41 | Registered |
| 36 | CHANDA ONLINE | 36 & 41 | Registered |
| 37 | KHAIRAT ONLINE | 36 & 41 | Registered |
| 38 | BARKAT ON LINE | 36 & 41 | Registered |
| 39 | CHARITY ONLINE | 36 & 41 | Registered |
| 40 | SADQA ONLINE | 36 & 41 | Registered |
| 41 | ZAKAT ONLINE | 36 & 41 | Registered |
| 42 | FITRA ONLINE | 36 & 41 | Registered |
| 43 | EIDI ONLINE | 36 & 41 | Registered |
| 44 | DONATION ONLINE | 36 & 41 | Registered |
| 45 | IDOL | 16 & 41 | Registered |
| 46 | PAKISTANI IDOL | 41 | Registered |
| 47 | BAS KAR AWARDS | 9,16,38 & 41 | Registered |
| 48 | DIN RAAT | 9,16,38 & 41 | Registered |

15. That in this regard, the Plaintiff in 2004 began working on a multi-platform media initiative under the banner of **BOL**. The Plaintiff's strategy included the launch of feature length film, newspaper and television channel, which could serve as a voice for the youth and bring forth important issues afflicting our society. **BOL** would be the slogan for raising general awareness through a campaign drawing attention to issues that promote and/or represent disparity and injustice in our society. The theme or the name **BOL** was suggested or selected to convey to the masses that it is their voice that has primacy and they could use **BOL** to raise their voices to bring forth their problems, to seek justice and resolve social, cultural and economic conflicts.
16. That in the course of its business the plaintiff is confronted with day to day challenges that kept it away from practically launching the satellite channel **BOL** despite adoption in the year 2004. However, it was in early 2007 that the Plaintiff's affiliated concern

decided to work in collaboration with a well acclaimed producer and director to create a film to be screened internationally highlighting one of most important and neglected social evil that has virtually ruined many lives. In this pursuit the film under the title **BOL** was penned down, scripted, made and released under an arrangement by the plaintiff and it became a mega hit claimed several awards at national and international level. The secret behind the success of the film **BOL** was the social evil that was the subject highlighted. In order to promote the title **BOL** plaintiff had send millions of rupees that resulted in earning envious goodwill and reputation to the plaintiff. In fact on account of said project **BOL** proved itself as a brand and became synonymous to the plaintiff. The Plaintiff group's film **BOL** remains popular to this day and is frequently broadcast on television and its DVDs continue to be supplied and sold in high numbers throughout the world. Resultantly the name **BOL** has become synonymous to that of the plaintiff and is recognized as such amongst the masses.

(Attached herewith are the copies of marketing and promotional material possessing title/slogan/service mark / trademark **BOL** marked as **Annexure D**)

17. That the Plaintiff is the original creator, developer, adapter, first ever user and proprietor of the title / slogan / trade mark / service mark **BOL** and the plaintiff's rights in respect of the title / slogan / trade mark / service mark **BOL** are well protected under trademark law. The Plaintiff's trademark **BOL** is duly registered vide registration no. 238904 by the Trade Marks Registry, Intellectual Property Organization. The Plaintiff first applied for the registration of the trademark **BOL** in 2004 and the same has also been accepted as No. 195773. In addition thereto, the copyright to the film under title **BOL** is also registered with the Central Copyrights Office, Intellectual Property Organization.

(Trademarks Registration and Application Details Certificate and Copyrights Registration Certificate for **BOL** are attached hereto and marked as **Annexure E-1** to **E-2** respectively.)

18. That in light of the foregoing the intellectual property rights associated with the above mentioned title / slogan / trade mark / service mark and the television format / concept are reserved for the exclusive use of the plaintiff only. Moreover, due to the extensive marketing and publishing campaign Plaintiff's title / slogan / trade mark / service mark **BOL**, all the stakeholders and the general public relate it solely to the Plaintiff and no one else.
19. That the reputation and goodwill of trademarks / service marks and companies are no longer territorial and not confined within the national borders of any country, especially with the proliferation of the electronic media. The renown of the trade mark / service mark travels across international borders and obtains an international character. That the plaintiff's channels and programs are viewed across the globe and the plaintiff is considered amongst leading intellectual property exporter in Pakistan. The plaintiff's channels and the programs, slogans, jingles, animations, logos etc. that appear on these channels have become very famous throughout the world. It can therefore undoubtedly be submitted that the film/campaign under the title / slogan / trade mark / service mark **BOL** has acquired global recognition and become a world famous trademark.
20. That it is reiterated that rights in respect of the said trademark / title / brand **BOL** are duly protected to the exclusion of all others under the Intellectual Property laws of the country in favor of the plaintiff and plaintiff being the registered proprietor of the same enjoys the exclusive right to use the same in the course of its business.
21. That plaintiff has just learnt that defendant no. 1 to 4 in active connivance and collusion have incorporated defendant 5 and defendant no. 6 respectively to foster their ulterior motive of usurping the rights of the plaintiff in respect of the registered trademark **BOL**. The malafide on part of the said defendants is further fortified from the fact that defendants, being fully alive and

aware of the proprietary rights of the plaintiff in respect of trademark BOL have vouched to join hands under the veil of incorporation while using the name and style as **BOL News (Private) Limited** and / or **BOL Entertainment (Private) Limited**. It is thus safe to state that said defendants are acting with an aim to defeat the statutory rights of the plaintiff in its registered trademark **BOL** through sheer abuse of due process of law. The facts of the case establish beyond any iota of doubt that defendants are making all out efforts to secure and/or procure rights for defendant no. 8, who is a subsidiary of a foreign company that holds more than 90% shares in said defendant no. 8. It is worth noting that earlier the Plaintiff upon learning that Defendant no. 7 to defendant no. 9, in mutual connivance and collusion are illegally and unjustly attempting to misappropriate its registered trademark / service mark **BOL**, initiated a legal action before the competent court of law at Lahore for redress of its grievance and the learned Court, taking cognizance in the matter, has passed an ad-interim injunction order against the said defendants.

(Attached hereto are certified copies of Court order, Form 29. Memorandum of Association & Articles of Association of Defendant No 5 and 6 marked as **Annexure F**)

22. That plaintiff has also learnt through reliable sources that defendants have changed the name of their television channel from **LABAIK** to **BOL NEWS** and allegedly acquired the rights by negating compliances of mandatory statutory provisions.
23. The Defendant No. 8 which appears to be the undocumented sponsor of the initiative has launched a marketing campaign falsely claiming to be launching a satellite channel under the name **BOL**, in sheer violation of the Plaintiff's rights. It is worth mentioning that defendant no. 8, a company having foreign ownership, is falsely alleging and baselessly claiming to be proprietor by trademark / service mark **BOL** as said company has also filed several applications for registration of said trademark before the authority despite of specific knowledge of plaintiff's proprietary rights in **BOL** simply to frustrate the said rights of the

plaintiff through abuse of due process of law. As such any or all efforts on part of Defendants either alone or in collusion with each others are malafide and prejudicial to commercial and proprietary rights of the Plaintiff in its well established brand / title / name / trademark **BOL** and are liable be declared unfair and based upon bad faith.

(Attached hereto are proofs of Defendants infringing use of trademark **BOL** and search report marked as **Annexure G** and **H** respectively)

24. That it is worth mentioning at this pointed out that Defendant No.8 which is actively publicizing the yet to be launched channel and claiming to be the sponsor of the said channel, is majority owned by a foreign company, as aforesaid which would bar said company from obtaining a license under Section 25 of the PEMRA Ordinance. This clearly establishes that the Defendants are attempting to circumvent the statute through active collusion and through abuse of due process of law. It may also be pointed out that the broadcasting license granted by Defendant No. 9 makes it obligatory upon the licensee i.e. Defendants, either jointly or severally to abide by the laws of the country, including but not limited to the Trademarks Ordinance, 2001. Thus, under the relevant provisions of the said enactment the use of **BOL** by defendants, jointly or severally, either as a trademark or as a trade name is in breach of the exclusive proprietary rights of the plaintiff hence, illegal making it incumbent upon defendant no. 9 to cancel any such license.

(Attached hereto is the List of satellite TV license issued by Pemra marked as **Annexure I**)

25. That the Defendants are illegally trading upon the Plaintiff's hard earned goodwill by malafidely copying and imitating its trade mark / service mark **BOL**. The Defendant's action are an offence under the law and the sole intention of the Defendants is to en-cash the Plaintiff's goodwill and to trade on the fame and repute of the Plaintiff's distinctive title / slogan / trade mark / service mark which can simply be fortified from the fact that defendants had before them a wide open field to choose its name from but said

defendants remained adamant to use illegally the name/brand of the plaintiff. That the Defendants are aiming to broadcast their channel by circumventing and misappropriating the goodwill and reputation. The Defendants' actions are likely to cause grave injury to the Plaintiff and wipe out the years of work, resources and energy spent by the Plaintiff in the development of **BOL** as a cross-platform media initiative.

26. That the Defendants actions are in in clear negation of the statutory provisions, as stipulated in Section 39, and Section 40 of Trade Marks Ordinance 2001 as well in breach of Section 54 of the Copyright Ordinance 1962, as Defendants are infringing the proprietary rights of the Plaintiff. The illegal acts of the Defendant are more than likely to cause severe loss to the Plaintiff and said act will result in diluting the goodwill and reputation of the Plaintiff as the Defendant has exactly imitated the title / slogan / trade mark / service mark **BOL** of the plaintiff's, which was developed, introduced and first adopted by the Plaintiff only in the year 2004. Furthermore the exact nature of the business shall only diminish the reputation of the Plaintiff further. The acts of the Defendant are inexcusable under the law and a bare indication of fraud, unfair competition and passing off, as such Defendants are liable to be restrained.

27. That unless the Defendants are immediately restrained, the Plaintiff shall be gravely injured and its reputation and goodwill will be left in tatters, thereby drastically diminishing its ability to conduct its business. The aforesaid illegal trade and business activities on part of the Defendants have already caused substantial losses to the business of the Plaintiff and damaged the reputation of the Plaintiff. In addition thereto, the said acts on part of the Defendants are bound to dilute the Plaintiff's exclusive right which is leading to grave business and opportunity losses to the Plaintiff. The Plaintiff estimates this loss of business and opportunity loss to be in the tune of Rs. 500 Million and the Defendant is liable to compensate the Plaintiff for the said loss under the law.

8. That there exists no standard for ascertaining the actual damage caused or likely to be caused to the Plaintiff by the aforesaid invasion at the hands of the Defendants and that no pecuniary compensation would afford adequate relief on account of such invasion. Therefore, under the circumstances, it is necessary, essential, expedient and in the best interest of justice that the Defendants and/or any person or persons including his agents, servants, associates, and all persons claiming through or under the Defendants be permanently restrained from doing any illegal act inclusive of creating, making, producing, broadcasting and / or marketing and advertising the program under the imitated trade mark **BOL** and / or any deceptively similar and identical variation thereof in any manner whatsoever.
29. That it is submitted that the Plaintiff has, and continues to, suffer irreparable losses in the form of harm done to its goodwill and repute, occasioning as a result of the continued infringement of the plaintiff's title / slogan / trade mark / service mark **BOL** by the Defendant, running the program on air under the imitated trademark **BOL**, which is irreparable in nature as such Defendant is liable to be restrained from aforesaid illegal business and unfair competition.
30. That the cause of action for the titled Suit arose in 2nd week of November 2013, when the Plaintiff learnt about the incorporation of defendant no. 5 and 6 by other defendants illegally and unjustifiably under the plaintiff's duly registered trade mark / service mark **BOL** and said cause is recurring in nature and continues unabated.
31. That the cause of action has accrued at Karachi where plaintiff and defendants are residing and carrying on their respective businesses as such this Honourable Court possesses the jurisdiction to try the instant suit.

32. That for the purposes of Court Fee, Jurisdiction, Injunction and damages, the suit is valued at Rs. 500 Million and requisite Court Fee is affixed hereto.

PRAYER


That in view of the foregoing the Plaintiff most humbly prays for a decree in favor of Plaintiff and against the Defendants for:


- a. Permanent injunction restraining defendants either jointly or severally from setting up, owning, establishing, operating and / or running television station or other station involving the use of the satellite, cable, internet, dish, MMDS, direct to home, receivers or any other means of telecasting either themselves and/or through any other television station or stations in or outside Pakistan and/or to open any channel and/or to air any program under the name and style as **BOL** in any manner whatsoever.
- b. Permanent injunction restraining the Defendants either jointly or severally, their agents, men and representatives from using the trademark / service mark **BOL** in the course of their business and from marketing, selling, promoting and/or offering for sale their goods or services by infringing / imitating / counterfeiting the Plaintiff's registered trademark **BOL** and / or any intellectual property belonging to the Plaintiff in any manner whatsoever.
- c. Permanent injunction against defendant no. 1 to 4 thereby restraining said defendants from using, adopting, marketing and /or from carrying on any commercial activity, either jointly or severally, under the trading style / trade name / company name **BOL** in any manner and for any purposes whatsoever.
- d. A declaration that act of adoption and / or use of trademark / service mark **BOL** either alone or in conjunction with any other word or feature or device including filing of applications for registration by the defendants for the purposes of telecasting

and/or establishing television channel is an act of unfair competition hence illegal.

- e. Permanent injunction restraining the Defendants their agents, men and representatives from entering into or carrying out any act of unfair competition in any manner whatsoever.
- f. Directing the Defendant to furnish detail account of sales and profits made through the use of the infringing / imitated trademark / service mark BOL and to furnish payments to the Plaintiff equating to said revenue.
- g. Directing the Defendant to pay a sum of Rs. 500 million as token of compensation for causing loss of business and opportunities to the plaintiff.
- h. Any other relief or relief(s) which this Honorable Court deems fit and proper under the circumstances of the case.
- i. Cost of suit may also be awarded.

Karachi
Dated:



PLAINTIFF


ADVOCATE FOR THE PLAINTIFF

VERIFICATION

I, Mr. Mansoor Rehman S/o Mr. Ata-ur-Rehman, adult, Muslim, resident of House No. 31/C, Street No. 05, Block -2, Karachi Administration Housing Society, Karachi do hereby verify of oath that the contents of para 1 to para 29 are true to the best of my information and from 30 to 32 are based upon advise which I believe to be correct.


19/1
ASSISTANT REGISTRAR-II
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF Sindh



DEPONENT

CNIC No: **42301-8238836-5**

Cell No: **0300-2300457**

Identified by me.

ADVOCATE

Reg. No: **4572/HC/KHI**

Phone No: **0300-2300457**

Solemnly affirmed before me on this _____ day of November 2013, by the deponent, above named who is identified to me by Mirza Mehmood Baig Advocate, who is known to me personally.

COMMISSIONER FOR TAKING AFFIDAVITS

ASSISTANT REGISTRAR-II
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH

Documents filed:

Annexure A to Annexure I

Documents relied upon:

Originals of the above and / or all others documents deemed essential and necessary after framing of issues.

Address of the parties:

As mentioned in the title of the suit.

Address of Advocate
for service.

ALI & ASSOCIATES
6-Shaheen Towers, 23-A,
Block-6, P.E.C.H.S.,
Shahrah-e-Faisal,
Karachi

Drafted by me:

Advocate

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No: 146/ of 2013

Independent Media Corp. Pvt Ltd

PLAINTIFF

VERSUS

Shoaib Ahmed Sheikh and others

DEFENDANT

AFFIDAVIT IN SUPPORT OF VERIFICATION OF PLAINT

Mr. Mansoor-ur-Rehman Son of Atta-ur-Rehman, resident of House No. C-31 Block II Street No. 5 Adminstration H.S. Karachi., affirmed on oath before me at Karachi on this 19-NOV-2013 in the 'Identity Section' of this court.

ASSISTANT REGISTRAR-II
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH

Photograph of Deponent



Signature of Deponent

CNIC: 42301-8238636-5

Cell No. 0300-2300457

☒ Original CNIC verified by Bar Code Reader

☒ Photo taken at I.S.

☒ Biometric Attendance done at I.S.

Video recording done at I.S.

☒ CNIC verified through NADRA

Finger Prints verified through NADRA



Electronic Finger Print taken at I.S.

COMMISSIONER FOR TAKING AFFIDAVIT

Tag ID: 19111334330

No. of Affidavit : 1/3

Cost received : Rs. 30

Printed on: 19-NOV-2013 at 09:51 am

(AMMENDED TITLE)

IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 1461 / 2013

Presented on 20/11/13

Assistant Registrar (D-10)

INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED

(A company incorporated under
The Companies Ordinance 1984)
Having its principle place of business
At Printing House, I. I. Chundrigar Road,
Karachi

(Through its authorized signatory) Plaintiff

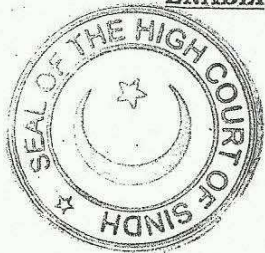
Versus

1. Shoaib Ahmed Sheikh S/o Bashir Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
2. Ayesha Shoaib Sheikh W/o Shoaib Ahmed Sheikh
Adult Muslim resident of
26/2, 18th Street, Khayaban-e-Tanzeem,
Phase-V, DHA,
Karachi
3. Vikas Atiq S/o Atiq-ur-Rehman
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
4. Mrs. Sarwat Bashir W/o Viqas Atiq
Adult Muslim resident of
129-A, 29th Street, Khayaban-e-Qasim
Phase-VIII, DHA,
Karachi
5. BOL News (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi
6. BOL Enterprises (Private) Limited
114-116 C, Jami Commercial Street No. 13,
Phase-VII, DHA,
Karachi



7. Labbaik (Private) Limited
(A company incorporated under
The Companies Ordinance 1984)
(Through its Chief Executive/Directors)
Having its principle place of business
at C-47, 16th Commercial Street,
Phase-II, DHA,
Karachi
 8. Axact (Private) Limited
(a Pakistani company)
Through its Chief Executive / Directors/Secretary)
Of 114-116, Jami Commercial Street,
Phase-II, DHA,
Karachi
 9. Pakistan Electronic Media Regulatory Authority
Through its Chairman
Having place of business at
Mauve Area,
Islamabad
 10. Securities & Exchange Commission of Pakistan
Company Registration Office
State Life Building-2, 4th Floor
North Wing, Wallace Road,
Karachi
- Defendants

**SUIT FOR PERMANENT INJUNCTION, DAMAGES & RENDITION
OF ACCOUNTS AGAINST INFRINGEMENT OF TRADEMARK,
PASSING OFF AND UNFAIR COMPETITION UNDER THE
TRADEMARKS ORDINANCE 2001 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW**



ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1461 of 2013

Date

Order with signature of Judge

1. For orders on CMA No.12774/13 (if granted)
2. For orders on CMA No. 12775/13 (U/S 94 R/w Order 39 R 1&2 CPC)

19.11.2013.

Mr. Khurram Gul Ghori; Advocate for plaintiff.

- 1). Urgency granted.
- 2). Learned counsel for the plaintiff may file amended title making S.E.C.P. defendant in this matter within three days and once the S.E.C.P. has been made defendant notice also to the said commission.

Notice to the defendants for 26th Nov. 2013. Till the next date ad-interim order is granted as prayed but subject to the condition that any use of the word "BOL" by defendant Nos.5 and 6 solely by virtue of the fact that such word is part of the company name of each of these defendants, and such company name is being used for any of the purposes or requirements of the Companies Ordinance shall not constitute a violation of the order made today. Learned counsel is put on notice that this interim order must be extended specifically on each date of hearing.

Judge

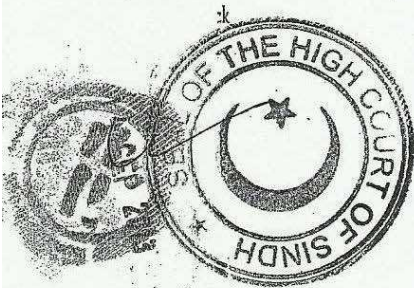


EXHIBIT C

ESTTA Tracking number: **ESTTA639745**

Filing date: **11/18/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | Independent Media Corporation (PVT.) Ltd |
| Granted to Date of previous extension | 12/03/2014 |
| Address | Printing House, I.I.Chundrigar Road Karachi, PAKISTAN |

| | |
|-------------------------|--|
| Domestic Representative | Harold Novick Attorney of record Novick, Kim & Lee, PLLC 1604 Spring Hill Rd.Suite 320 Vienna, VA 22182 UNITED STATES docket@nklaw.com, hnovick@nklaw.com, hnovick@novick.com, ada@nklaw.com Phone:703-546-8554 |
|-------------------------|--|

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 86165686 | Publication date | 08/05/2014 |
| Opposition Filing Date | 11/18/2014 | Opposition Period Ends | 12/03/2014 |
| Applicant | Bol Enterprise (Pvt.) Limited 114-116 C, Jami Commercial Street - 13 Karachi, PAKISTAN | | |

Goods/Services Affected by Opposition

| |
|---|
| Class 038. First Use: 2013/03/01 First Use In Commerce: 2013/03/01 All goods and services in the class are opposed, namely: Broadcast of cable television programmes; Broadcasting of radio programmes; Broadcasting of television programmes; Broadcasting of video and audio programming over the Internet; Broadcasting programs via a global computer network; Broadcasting services and provision of telecommunication access to films and television programmes provided via a video-on-demand service; Satellite television broadcasting; Satellite transmission services, television and radio broadcasting services; Subscription television broadcasting |
| Class 041. First Use: 2013/03/01 First Use In Commerce: 2013/03/01 All goods and services in the class are opposed, namely: Entertainment in the nature of television news shows; News agencies, namely, gathering and dissemination of news; News reporter services in the nature of news analysis and news commentary; News syndication for the broadcasting industry; Providing current event news via a global computer network; Providing information, news and commentary in the field of entertainment; Providing news and information in the field of sports |

Grounds for Opposition

| | |
|---|---|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |

Mark Cited by Opposer as Basis for Opposition

| | | | |
|------------------------------------|--|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | BOL | | |
| Goods/Services | movies and films, and pre-recorded CDs, video tapes, laser disks and DVDs featuring social drama | | |

| | |
|-------------|---------------------------------------|
| Attachments | NOTICE OF OPP filed.pdf(87931 bytes) |
|-------------|---------------------------------------|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------------|
| Signature | /Harold L Novick/ |
| Name | Harold Novick |
| Date | 11/18/2014 |

STATEMENT OF OPPOSITION

1. Opposer since prior to Applicant's filing date of its present application of January 15, 2014, and prior to its copending applications Serial Number 86/165,686 claimed first use date of March 1, 2013 and Serial Number 85/966,100 filing date of its application of June 21, 2013, adopted and continuously used in commerce the mark BOL in standard characters (hereinafter, BOL Mark) for, inter alia, movies and films, and pre-recorded CDs, video tapes, laser disks and DVDs featuring social drama (Class 9 Products).

2. Opposer filed a trademark application for its BOL Mark under Section 44E in the U.S. Patent and Trademark Office on May 21, 2014 based on Pakistan Registration No. 23894 granted July 7, 2007, which US application was assigned Serial Number 86/288,431, for its services "Entertainment services in the nature of television talent show, musical performances, and the production of radio and television programmes."

3. Opposer has enjoyed and continues to enjoy substantial success in the promotion of its Class 9 Products bearing its BOL Mark, which have been continuously promoted, advertised, imported into, and sold throughout the United States and in other countries throughout the world where United States citizens travel. Its Class 9 Products are also currently available on the internet, such as the Amazon website.

4. Substantial sums have been expended to advertise and promote the Class 9 Products, and the customers thereof constitute a significant number of persons who are located throughout the United States.

5. By virtue of its use and sale, and of the advertising and promotional expenditures for the goods, Opposer's BOL Mark has become well and favorably known to the film viewing industry and to the public in general as an indication of origin of Opposer's Class 9 Products.

6. By virtue of the substantial sale, advertisement and promotion of the BOL Mark, Opposer has built up extensive good will and consumer recognition of its BOL Mark.

7. The Applicant's BOL mark is identical to Opposer's BOL Mark, and thus is confusingly similar thereto.

8. Because of the similarity of Applicant's mark to Opposer's BOL Mark, confusion, mistake or deception of the public and purchasers and users or prospective purchasers and users is not only likely, but inevitable.

9. Applicant's services are provided to the same class of customers as Opposer's Class 9 Products.

10. Applicant's services are provided in the same channels of trade as Opposer's Class 9 Products.

11. Applicant's services are related to Opposer's Class 9 Products and Class 41 Services.

12. There is likelihood that Applicant's alleged use of its mark in connection with its services will cause confusion, or cause mistake, or deceive.

13. Applicant's alleged use of its mark in connection with its services will result in a likelihood that consumers and users and prospective consumers and users of Opposer's goods bearing its BOL Mark and of Opposer's services in connection with its BOL Mark would believe that Opposer produced or sponsored those services or was in some way connected with Applicant.

14. Opposer, because of its earlier use in commerce, has superior rights to the BOL Mark than Applicant.

15. Should Applicant obtain a registration for its mark, such registration would damage the rights of Opposer because such registration would interfere with Opposer's rights in its BOL Mark, and would provide Applicant with prima facie evidence of the validity of a mark which is likely to cause confusion, to cause mistake or to deceive in view of Opposer's BOL mark.

16. Registration of Applicant's mark thus will damage and injure Opposer within the meaning of the Trademark Act.

17. Applicant has applied for registration of its mark in bad faith and its declaration supporting its application is false and fraudulent because Applicant knew of Opposer's prior rights when Applicant executed its application's declaration.

18. As a result of a temporary injunction decree granted in a law suit in Pakistan on November 19, 2013 between the present parties prior to the filing date of Applicant's application on January 15, 2014, Applicant was restrained from setting up, owning, establishing, operating and/or running TV station involving the use of satellite, internet, etc. in or outside of Pakistan using the BOL mark. Consequently the Applicant's official executing the application was unable to truthfully state in the declaration that he "believes the applicant to be the owner of the trademark/service mark sought to be registered, ... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce..." As a result of such untruthful declaration, Applicant has applied for registration of its mark in bad faith and has committed fraud on the Patent and Trademark Office.

19. A copy the Pakistan Complaint is attached hereto as Exhibit 1, and is incorporated herein by reference. A copy of the Injunction Order restraining Applicant is attached hereto as Exhibit 2 and is incorporated herein by reference. This Injunction Order is still in effect as a result of an Order continued at the latest hearing held on July 12, 2014.

WHEREFORE, Opposer prays that this Opposition be sustained, that the mark of Applicant be refused and denied registration, and that the application by Applicant be rejected; and prays for such other and further relief as the Board deems appropriate.

EXHIBIT D

THIS OPINION IS NOT A
PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

AJZ

Mailed: January 14, 2016

Opposition Nos. 91216909
91216942
91219384

Independent Media Corporation (PVT.) Ltd.

v.


BOL Enterprise (PVT.) Ltd.

Before Quinn, Zervas and Wolfson, Administrative Trademark Judges.

By the Board:

BOL Enterprise (PVT.) Ltd. (“Applicant”) is the owner of the following applications for registration on the Principal Register, which have been opposed by Independent Media Corporation (PVT.) Ltd. (“Opposer” or “IMC”):




- Serial No. 85966100¹ for the mark  for the following International Class 41 services:

Audio production services, namely, creating and producing ambient soundscapes, and sound stories for museums, galleries, attractions, podcasts, broadcasts, websites and games; Education services, namely,

¹ Filed June 21, 2013 based on a *bona fide* intention to use the mark in commerce, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). A translation statement entered into the application record states, “The English translation of the word ‘BOL’ in the mark is ‘speak’.”

providing hands-on opportunities for children in the field of intuitive engineering through live, broadcast, and on-line classes, seminars, workshops, training and curriculum development for children, parents and educators; Entertainment in the nature of an ongoing special variety, news, music or comedy show featuring politics, social issues, current affairs, drama and news broadcast over television, satellite, audio, and video media; Entertainment services, namely, an ongoing series featuring variety and news provided through satellite television; Entertainment services, namely, providing continuing musical, comedy and variety stage shows, dramatic shows, and news shows broadcast over television, satellite, audio, and video media.



- Serial No. 86003454² for the mark  for the following services:

“Audio and video broadcasting services over the Internet; Broadcast of cable television programmes; Broadcasting of radio programmes; Broadcasting of television programmes; Broadcasting services and provision of telecommunication access to films and television programmes provided via a video-on-demand service; Broadcasting services, namely, transmission of advertising programs and media advertising communications via digital communications networks; Electronic transmission of voice, data and images by television and video broadcasting; Internet broadcasting services; Satellite television broadcasting; Satellite transmission services, television and radio broadcasting services; Simulcasting broadcast television over global communication networks, the Internet and wireless networks; Subscription television broadcasting; Video broadcasting and transmission services via the Internet, featuring films and movies; Video broadcasting services via the Internet; Wireless broadcasting” in International Class 38; and

² Filed July 6, 2013, pursuant to Section 1(b) of the Trademark Act. A transliteration statement in the application record states, “The non-Latin characters in the mark transliterate to ‘BOL’ and this means ‘SPEAK’ in English.”

Audio production services, namely, creating and producing ambient soundscapes, and sound stories for museums, galleries, attractions, podcasts, broadcasts, websites and games; Education services, namely, providing hands-on opportunities for children in the field of intuitive engineering through live, broadcast, and on-line classes, seminars, workshops, training and curriculum development for children, parents and educators; Entertainment in the nature of an ongoing special variety, news, music or comedy show featuring current affairs broadcast over television, satellite, audio, and video media; Entertainment services, namely, organizing and conducting an array of athletic events rendered live and recorded for the purpose of distribution through broadcast media; Entertainment, namely, a continuing variety show broadcast over television, satellite, audio, and video media; News syndication for the broadcasting industry” in International Class 41;

- Serial No. 86165686³ for the mark BOL (in standard characters) for the following services:

“Broadcast of cable television programmes; Broadcasting of radio programmes; Broadcasting of television programmes; Broadcasting of video and audio programming over the Internet; Broadcasting programs via a global computer network; Broadcasting services and provision of telecommunication access to films and television programmes provided via a video-on-demand service; Satellite television broadcasting; Satellite transmission services, television and radio broadcasting services; Subscription television broadcasting” in International Class 38; and

“Entertainment in the nature of television news shows; News agencies, namely, gathering and dissemination of news; News reporter services in the nature of news analysis and news commentary; News syndication for the broadcasting industry; Providing current event news via a global computer network; Providing information, news

³ Filed January 15, 2014, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming first use and first use in commerce on March 1, 2013.

and commentary in the field of entertainment; Providing news and information in the field of sports” in International Class 41.

Opposer alleges (i) prior use of the mark BOL for, *inter alia*, movies and films, and pre-recorded CDs, video tapes, laser disks and DVDs featuring social drama, and for audio production services, educational services and entertainment services; and (ii) likelihood of confusion with its alleged mark.⁴ In addition, Opposer alleges:

18. Applicant has applied for registration of its mark in bad faith and its declaration supporting its application is false and fraudulent because Applicant knew of Opposer’s prior rights when Applicant executed its application’s declaration.

19. Opposer brought a suit against Applicant in Pakistan for, *inter alia*, trademark infringement of Opposer’s Pakistani registered mark BOL, and was granted a world-wide preliminary injunction against Applicant.⁵

⁴ In Opposition No. 91216942, Opposer alleges prior use of BOL in the Urdu language in connection with additional services. 1 TTABVUE 4 (Opposition No. 91216942).

Citations are to the record in Opposition No. 91216909, unless otherwise noted.

⁵ 1 TTABVUE 4. Applicant further explains in the complaint filed in Opposition No. 91219384:

18. As a result of a temporary injunction decree granted in a law suit in Pakistan on November 19, 2013 between the present parties prior to the filing date of Applicant’s application on January 15, 2014, Applicant was restrained from setting up, owning, establishing, operating and/or running [sic]TV station involving the use of satellite, internet, etc. in or outside of Pakistan using the BOL mark. Consequently the Applicant’s official executing the application was unable to truthfully state in the declaration that he “believes the applicant to be the owner of the trademark/service mark sought to be registered, ... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce” As a result of such untruthful declaration, Applicant has applied for registration of its mark in bad faith and has committed fraud on the Patent and Trademark Office.

1 TTABVUE 4 (Opposition No. 91219384).

Applicant has denied the salient allegations of the Notices of Opposition in Answers filed in each opposition.

This case now comes up on Applicant's motions for summary judgment filed in Opposition Nos. 91216909 and 91216942 on the grounds of likelihood of confusion and fraud.⁶ On August 18, 2015, after Applicant had filed its motions for summary judgment, the Board consolidated the later-filed Opposition No. 91219384 with the earlier two opposition proceedings. No summary judgment motion appears in Opposition No. 91219384. Because Opposer's three Notices of Opposition are highly similar, the arguments raised in the two filed summary judgment motions apply to the claims asserted in all three oppositions, and the parties have treated the summary judgment motions as applying to all three oppositions. Therefore, we consider the summary judgment motions to be directed to the claims asserted in all three oppositions.

Applicant asserts that Opposer's claim of priority of use is premised solely upon its exploitation and promotion of a Pakistani motion picture entitled "Bol" which was briefly released in theaters in the United States in the fall of 2011 (hereafter, the "BOL Film"). According to Applicant, "[i]n response to its Initial Disclosures requirements and BOL's document requests seeking all documents supporting any claim by IMC of rights in the BOL Mark prior to June 21, 2013 [the filing date of application Serial No. 85966100], IMC produced documents depicting its use of the term 'BOL' solely as the title of the BOL Film in connection with the

⁶ Applicant's summary judgment motion is accompanied by the declaration of Scott Ceresia, attorney for Applicant, and exhibits.

release and sale of the film, promotional activities and an associated movie soundtrack.”⁷ In addition, “in sworn interrogatory responses, [Opposer] admitted that its exploitation and promotion of the BOL Film comprises the sole basis upon which it claims rights in the term ‘BOL’ prior to June 21, 2013.”⁸

Applicant relies on Opposer’s verified interrogatory responses to the following interrogatories:

- *Interrogatory No. 7*

State whether Opposer claims rights in the mark BOL in the United States prior to June 21, 2013 for any goods or services, and if so, identify each such good or service and explain the basis for each such claim.

Response:

... Opposer claims rights in the mark BOL in the United States prior to June 21, 2013.

Opposer launched a website on July 23, 2010 that has a world-wide audience, including the United States on which it promoted the film BOL and copies of the film were viewed in the US and are currently obtainable on DVD’s in the US. Associated with the showing of such movies, promotional services were provided. The basis of claims is the use of the mark.

- *Interrogatory No. 15*

State whether, prior to June 21, 2013, you made any use of Opposer’s BOL Mark in the United States other than in connection with the BOL Film, and if so, identify all such uses.

Response

Opposer states that the mark was used in promotion of the movie, on signs and posters. The mark was also used on music which was separately promoted.

- *Interrogatory No. 23*

State all facts and identify all documents that support Paragraph 1 of Opposer’s Notice of Opposition stating that, “Opposer

⁷ Ceresia Decl. ¶¶ 10-11; Exs. C-D, 14 TTABVUE 21, 90-115.

⁸ Applicant’s Brief at 5, 14 TTABVUE 6.

since prior to Applicant's filing date of its Intent To Use application of June 21, 2013 adopted and continuously used in commerce the mark BOL in standard character and in fanciful lettering (individually and collectively, "BOL Mark") for, inter alia, movies and films, and pre-recorded CD's, video tapes, laser disks and DVDs featuring social drama (Class 9 Products)."

Response

... Opposer states that the mark was used in promotion of the movie, on signs and posters. The mark was also used on music which was separately promoted.

• *Interrogatory No. 24*

State all facts and identify all documents that support Paragraph 2 of Opposer's Notice of Opposition stating that, "Opposer since prior to Applicant's filing date of its Intent To Use application of June 21, 2013 adopted and continuously used in commerce the BOL Mark for audio production services, education services, and entertainment and entertainment services (Class 41 Services)."

Response

... Opposer states that the provision of Class 41 services was done through the distribution of the BOL film. Also, see above responses.⁹

According to Applicant's motion, Opposer is claiming rights in the title of a single work, which, according to Federal Circuit and Board precedent, does not accord Opposer any trademark rights to assert against Applicant, and therefore Opposer does not have priority of use in connection with its likelihood of confusion claims.

Applicant also seeks summary judgment on Opposer's fraud claims, arguing that there can be no fraud in connection with Applicant's representation to the Office in its applications that Applicant had exclusive rights to BOL, because Opposer has no rights to BOL as a trademark.

⁹ Ceresia Decl. Ex. E., 14 TTABVUE 116.

Opposer responded to Applicant's motion, arguing that Opposer does not solely use BOL as a title of a movie, but also on soundtracks of the movie, and "on independent songs and [a] collection of songs,"¹⁰ and that Opposer has acquired secondary meaning in the BOL Film and its music. Opposer submitted (i) the declaration of Sulaiman Lalani, Executive Director of Opposer, with exhibits, (ii) the declaration of Angela Dai, an attorney for Opposer, with exhibits, and (iii) the declarations of various individuals testifying to the renown of the movie. With regard to Applicant's motion on the ground of fraud, Opposer states, without elaboration, that Applicant knew that Opposer had a right to use the mark when it signed its declarations. Opposer refers us to what appears to be a complaint for a Pakistani action and a three-page order from a Pakistani court which Opposer attached to the Notices of Opposition. The complaint and order, however, are not part of the summary judgment record; except as provided in Trademark Rule 2.122(d), 37 C.F.R. § 2.122(d), regarding trademark registrations, exhibits attached to pleadings do not form part of the record. Trademark Rule 2.122(c). In addition, the submission of the complaint and order with Ms. Dai's declaration does not make them of record; the declaration does not specifically identify the complaint and order. Documents not specifically identified in a declaration cannot be considered as exhibits to the declaration. *See Missouri Silver Pages Directory Publishing Corp. Inc. v. Southwestern Bell Media, Inc.*, 6 USPQ2d1028, 1030 n.9 (TTAB 1988) ("opposers have submitted various documents [T]hey were not specifically identified in the affidavit and cannot be considered as exhibits to the affidavit.");

¹⁰ Opposer's Brief at 8-9, 14 TTABVUE 9-10.

Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 528.05(b) (June 2015) (“Documents submitted with a summary judgment affidavit, but not identified therein, cannot be considered as exhibits to the affidavit.”).¹¹

Summary judgment is an appropriate method of disposing of cases in which there is no genuine dispute with respect to any material fact, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c)(1). A party moving for summary judgment has the burden of demonstrating the absence of any genuine dispute as to a material fact, and that it is entitled to judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Sweats Fashions, Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793, 1796 (Fed. Cir. 1987). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. See *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods, Inc. v. Roundy’s, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

When the moving party has supported its motion with sufficient evidence that, if unopposed, indicates there is no genuine dispute of material fact, the burden then shifts to the non-moving party to demonstrate the existence of a genuine dispute of material fact to be resolved at trial. *Enbridge, Inc. v. Excelerate Energy LP*, 92 USPQ2d 1537, 1540 (TTAB 2009). All evidence must be viewed in a light favorable to the nonmovant, and all justifiable inferences are to be drawn in the

¹¹ Applicant also submitted Opposer’s complaint and attachments (including the Pakistani order) with Mr. Ceresia’s declaration, but did not identify the order; Applicant only identified the complaint.

nonmovant's favor. *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA Inc.*, 23 USPQ2d at 1472. Further, in considering whether summary judgment is appropriate, the Board may not resolve any genuine disputes of material fact necessary to decide the merits of the opposition. Rather, the Board may only ascertain whether any material fact cannot be disputed or is genuinely disputed. See *Lloyd's Food Products*, 25 USPQ2d at 2029; *Olde Tyme Foods*, 22 USPQ2d at 1542.

Priority

We turn now to Applicant's contention that Opposer's claim of priority is based only on the title of a single work and that Opposer's contention that it has a series due to the use of the BOL mark on a soundtrack for the BOL Film and "on independent songs and collection of songs."¹²

In *Mattel Inc. v. Brainy Baby Co.*, 101 USPQ2d 1140, 1142 (TTAB 2011), the Board stated:

The title of a single creative work is not considered a trademark, and is therefore unregistrable on the Principal Register under Trademark Act Sections 1, 2, and 45, 15 U.S.C. Sections 1051, 1052, and 1127. See *In re Cooper*, 254 F.2d 611, 117 USPQ 396 (CCPA 1958) ("*Cooper*"). The title of a single creative work is, of necessity, descriptive of the work and does not function as a trademark. See *In re Scholastic Inc.*, 223 USPQ 431, 431 (TTAB 1984) ("*Scholastic I*"). On the other hand, if a term has been used to identify the source of a series of creative works, it functions as a trademark, and the fact that it may also be included in the title of each work does not destroy its source-originating function. See *In re Scholastic Inc.*, 23 USPQ2d 1774, 1776 (TTAB 1992) ("*Scholastic II*"); TMEP Section 1202.08 (8th ed. 2011).

¹² Opposer's Brief at 8-9, 14 TTABVUE at 9-10.

The Board and the Federal Circuit, our primary reviewing court, consistently have found that the title of a single creative work is not a trademark. *See, e.g., Herbko Int’l Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1379 (Fed. Cir. 2002) (no proprietary rights in CROSSWORD COMPANION until publication of the second volume of a series of crossword puzzle books); *In re Posthuma*, 45 USPQ2d 2011, 2014 (TTAB 1998) (title of live theater production unregistrable, notwithstanding variations necessarily arising because the performances were live).

The name of a series of works, however, can be registered as a trademark even though the title of a single work cannot. The *Cooper* court explained this different treatment:

The name for a series, at least while it is still being published, has a trademark function in indicating that each book of the series comes from the same source as the others. The name of the series is not descriptive of any one book and each book has its individual name or title. A series name is comparable to the title of a periodical publication such as a magazine or newspaper. While it may be indicative either specifically or by association in the public mind, of the general nature of the contents of the publication, it is not the name or title of anything contained in it. A book title, on the other hand[,] especially one which is coined or arbitrary, identifies a specific literary work, of whatever kind it may be, and is not associated in the public mind with the publisher, printer or bookseller--the “manufacturer or merchant” referred to in the Trademark Act (Sec. 45, definition of Trademark). If a title is associated with anything, it is with the author for it is he who has produced the literary work which is the real subject of purchase.

In re Cooper, 117 USPQ at 400.

Applicant points out that the Board in the past has looked to see if the second work is based on or derived from the same creative work in determining whether the second work is part of a series. Applicant cites to *In re Author Servs.*, Serial No.

76227464 (TTAB Aug. 8, 2003), a decision designated as not citable, wherein the applicant argued that the title BATTLEFIELD EARTH should be registrable as a “series” based upon its use of the term on various different goods, including a compact disc containing the musical soundtrack from a film that was made into a movie, the DVD and videotape versions of the film, audio tapes of the book, and a magazine article devoted to the film.¹³ The Board agreed with the assigned Examining Attorney that all such uses of the term BATTLEFIELD EARTH were “simply the title of essentially a single creative work”:

All of the goods for which applicant seeks registration of the designation “BATTLEFIELD EARTH” plainly appear to be based on or derived from the same creative work, namely, the science fiction book by L. Ron Hubbard which is entitled “BATTLEFIELD EARTH.”

...

[T]he fact that the book entitled “BATTLEFIELD EARTH” has been . . . made into a motion picture, with a separately available soundtrack recording, all of which bear the title “BATTLEFIELD EARTH,” does not show that a series of audio tapes, video tapes and compact discs featuring science fiction books exists, much less that the designation “BATTLEFIELD EARTH” is a trademark for such goods rather than simply the title of what is essentially a single creative work as recorded therein.¹⁴

In the present case, there is no genuine dispute that the designation BOL was used on the BOL Film, which was distributed in the United States in 2011, and

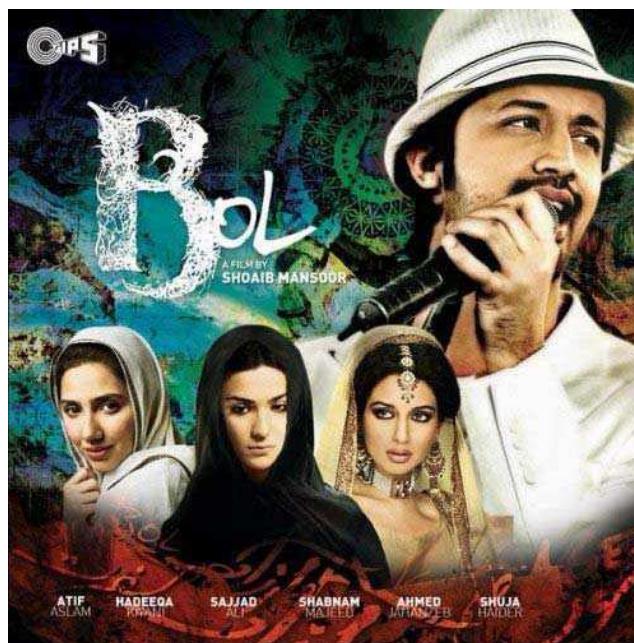
¹³ We do not base our decision on this non-citable case, but discuss it merely as an example of a similar Board ruling and because Applicant has relied on it in its Brief. The Board no longer designates decisions as citable or not citable. Rather, it designates decisions as “a precedent” or as “not a precedent” of the TTAB. Decisions issued as “not citable” or as “not a precedent” are not binding authority.

¹⁴ *Id.* at *14.

that no additional movie under the BOL designation has been distributed in the United States.

Opposer states in its Brief that it has distributed “independent songs and a collection of songs,” but provides no evidence that such songs exist, beyond the songs of the soundtrack. Opposer has not raised a genuine issue of disputed fact as to the existence of “independent songs and a collection of songs.”

With regard to the soundtrack, there is no genuine dispute that a soundtrack from the BOL Film, was distributed in the United States in 2011. The cover of the sound track uses the term BOL to refer to the BOL Film; the words “A FILM BY SHOAIB MANSOOR” appear directly underneath the title “BOL”:



Also, the record shows that iTunes refers to the soundtrack as the “Original Motion Picture Soundtrack.” Because of the soundtrack’s association with the BOL Film, and because only songs from the BOL Film are in the soundtrack or compilation of

songs, Applicant has established that the soundtrack or compilation of songs is based on or derived from the same creative work, namely, the BOL Film.

In the absence of evidence demonstrating that BOL is used on at least two different creative works, we conclude as a matter of law that BOL is simply the title of essentially a single creative work. *Cf., In re Arnold*, 105 USPQ2d 1953, 1956 (TTAB 2013) (requiring evidence that a title is used on at least two different creative works). *See also, Trademark Manual of Examining Procedure* (“TMEP”) § 1202.08(c) (October 2015).

Opposer also asserted that it has acquired secondary meaning in the term BOL and hence has trademark rights in BOL. However, there is an absolute bar to registration of the title of a single creative work on the Principal or Supplemental Registers. Titles of single creative works are incapable of any trademark significance and, therefore, unprotectable and unregistrable, even if the applicant submits proof of acquired distinctiveness. *See Herbko Int’l, Inc. v. Kappa Books, Inc.*, 64 USPQ2d at 1378 (“the title of a single book cannot serve as a source identifier”); TMEP § 1202.08 (“The title of a single creative work is not registrable on either the Principal or Supplemental Register.”).

In view of the foregoing, Applicant has established that Opposer has no trademark rights in the term BOL and that Opposer cannot demonstrate priority. Because Opposer cannot demonstrate priority, Opposer cannot prevail on its claim of likelihood of confusion under Section 2(d) of the Trademark Act.

Fraud

We now turn to Applicant's motion insofar as it pertains to Opposer's claim of fraud. Opposer maintains that Applicant "applied for registration of its marks in bad faith and its declaration supporting its applications are each false and fraudulent because [Applicant] knew of Opposer's prior rights when the application's declaration was executed."¹⁵ Because Opposer had no such prior rights in the mark BOL in the United States, Applicant's statements in its application declarations attesting to its exclusive right to use the applied-for marks were not false.

In addition, even if the order from the Pakistani court, mentioned above, were properly made of record, the order does not raise a genuine issue of disputed fact because (i) the Pakistani order, which comprises three pages (two of which form the long case caption identifying numerous parties), merely states, "Urgency granted" without any description of what is being granted; (ii) we will not assume the "Urgency granted" in the order refers to the prayer for relief in the complaint; (iii) Opposer has not authenticated the Pakistani order - it merely submitted the complaint and its exhibits; and (iv) the order states that it is an "interim order." Further, Opposer also has not addressed why we should recognize the Pakistani order under principles of international comity. *See Pilkington Brothers P.L.C. v. AFG Industries Inc.*, 581 F.Supp. 1039 (Del. 1984) ("an American court will under principles of international comity recognize a judgment of a foreign nation if it is convinced that the parties in the foreign court received fair treatment by a court of

¹⁵ Opposer's brief at 7, 14 TTABVUE 8.

competent jurisdiction ‘under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries... .’” (Citations omitted.)

Conclusion

Applicant has established that there are no genuine disputes of any material fact that Opposer has no prior trademark rights in the term BOL and that Applicant has not made any false statement in its application declarations. Summary judgment therefore is granted to Applicant on Opposer’s claims of likelihood of confusion and fraud in each opposition.

Decision: All three Oppositions are dismissed.

Opinion by Wolfson, Administrative Trademark Judge, in dissent.

I respectfully dissent from the decision dismissing the three consolidated oppositions.

In my opinion, the “title of a single work” doctrine should be applied only where there is a single creative work, and not where there exists an original creative work and a derivative work that substantially varies in content from the original. In such case, the owner of the purported mark does not have “essentially” one single creative work but multiple works, and should be given the opportunity to show that the title has acquired distinctiveness and no longer merely describes the work itself but functions to designate source.

Once there are two or more works called by the same name, and these works are not adaptations of each other, even if one is a unique derivation of the other, the doctrine should not apply.¹⁶ In such case, the party claiming ownership, such as Opposer herein, should be allowed to show that its use of the title on these multiple works, together with other indicia of association-creating activities (e.g., use of the mark as a trade name) and evidence of secondary meaning (such as length of use of the mark, advertising expenditures, sales, survey evidence, affidavits asserting source-indicating recognition), has given rise to proprietary rights based on a showing of acquired distinctiveness in the term. *See Herbko International Inc. v. Kappa Books Inc.*, 308 F3d 1156, 64 USPQ2d 1375 (Fed. Cir. 2002) (“Because sales of a single book title are insufficient to create proprietary rights and because Kappa provided no other evidence of association creating activities (e.g., use of mark as trade name), the Board erred in holding Kappa established priority to the mark.”).

In other words, while the title of a single creative work is incapable of functioning as a mark, once there are multiple works with the same title, the term cannot be said to automatically fail to function and it is error to hold as a matter of law that the owner cannot establish priority to the mark.¹⁷ In this case, Opposer has submitted evidence of consumer recognition of its mark that is sufficient, albeit

¹⁶ Naturally, this is a fact-based inquiry that requires consideration of the content of each work. In some cases, the works will be so similar that they will not qualify as unique derivations but remain “essentially” the same work.

¹⁷ We have long held that if the two works were of the same type, they would constitute a “series” and their common title would thereby fall outside the absolute bar created by application of the title of a single work doctrine. Instead, as with other allegedly descriptive marks, the title’s owner would be allowed to show that the title had acquired distinctiveness.

slight, to raise a genuine dispute of material fact as to whether the term BOL serves a trademark function. At trial, Opposer will be required to meet an extremely high evidentiary standard because as a title, BOL is the ultimate in descriptiveness for the works involved. However, I would not summarily preclude Opposer from being allowed to make this showing, if it can.

I would also not summarily dismiss Opposer's fraud claim. Opposer has shown that it has a real interest in this case and alleged that Applicant is enjoined from using the mark BOL (and presumably, its Urdu equivalent) in the United States under a temporary injunction order issued by a Pakistani court. The order was made of record as part of the evidence attached to the motion for summary judgment and to Opposer's response.¹⁸ Based on principles of international comity

¹⁸ The majority states that the Pakistani complaint and injunction order were not made part of the record, but I disagree. Exhibits 6 and 7 to the Dai Declaration are the Notices of Opposition in Opp. Nos. 91216909 and 91216942 (against Serial Nos. 85966100 and 86003454) and include several attachments, one of which is the Pakistani complaint and another of which is the injunction order. 26 TTABVUE 37 and 65. Ms. Dai identifies both the Notices of Opposition and the attachments in her declaration by the following statements:

7. A true and correct copy of IMC's Notice of Opposition *and attachments thereof*, filed on June 18, 2014, against the mark BOL (stylized/design) in the '100 application is hereby attached as Exhibit 6.

8. A true and correct copy of IMC's Notice of Opposition *and attachments thereof*, filed on June 18, 2014, against the mark BOL (Urdu) in the '454 application is hereby attached as Exhibit 7."

(emphasis supplied) 26 TTABVUE 3.

As for Opp. No. 91219384 (against Serial No. 86165686), Exhibit 10 to the Dai declaration is identified only as "Notice of Opposition." Although within the body of the Notice is a claim that a copy of the complaint and injunction order are attached as Exhibits 1 and 2 thereof, the record copy of the Notice does not include any attachments. 1 TTABVUE (in Opp. No. 91219384); 26 TTABVUE 103 (in Opp. No. 91216909). Nonetheless, in my opinion, the Pakistani documents are in the record in all three cases based on the statements made by Ms. Dai in the other consolidated oppositions, as elaborated above.

Further, to say that specifically identified documents such as the notices of opposition are in the record but their attachments are not in the record in my view is an incorrect reading

this Board may give weight to an order from a foreign jurisdiction under appropriate circumstances. Accordingly, I would find that there exists a genuine dispute as to the effect to be accorded this injunction and whether it has been vacated as argued by Applicant or remains in effect and has a bearing on the disposition of this case. At the least I would suspend proceedings in light of this apparent ongoing civil action, pending further information as to its status.

In sum, for the above reasons, I would find that there are genuine disputes of material facts sufficient to deny the motion for summary judgment.

of *Missouri Silver Pages* and the TBMP, which refer to non-specification of “documents,” not attachments to any such documents. To hold otherwise would mean that while Applicant’s submission of the Office Action that issued on 3/19/15 in Opposer’s ‘807 application could be considered as part of the motion for summary judgment evidence, none of the attachments to that Action could be, because Applicant merely stated “See Exhibit I” and did not specify the attachments to Exhibit I. Such result appears contrary to the spirit of the evidentiary requirement that documents, not documents and any attachments thereto, be identified.

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86/478,579
Filed: December 12, 2014
For Mark: BOL GOSSIP (Stylized Urdu characters)
Published in the Official Gazette: June 30, 2015

| | | |
|---------------------------------|---|--------------------------|
| -----X | : | |
| INDEPENDENT MEDIA CORPORATION : | : | |
| (PVT.) LTD., | : | |
| | : | |
| Opposer, | : | Opposition No.: 91224595 |
| | : | |
| v. | : | |
| | : | |
| BOL ENTERPRISE (PVT.) LIMITED, | : | |
| | : | |
| Applicant. | : | |
| -----X | : | |

ANSWER TO NOTICE OF OPPOSITION

Applicant BOL Enterprise (Pvt.) Limited ("BOL"), by and through its undersigned counsel, as and for its Answer to the Notice of Opposition filed by Opposer Independent Media Corporation (Pvt.) Ltd. ("IMC") in the above-referenced Opposition No. 91224595, alleges as follows:

1. BOL denies the allegations set forth in paragraph 1 of the Notice of Opposition.
2. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Notice of Opposition, except admits that IMC filed Application Serial No. 86/288,431 on May 21, 2014 and refers the Board to the cited application for a complete and accurate statement of its contents.
3. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Notice of Opposition, except admits that IMC filed

Application Serial No. 86/464,807 on November 25, 2014 and refers the Board to the cited application for a complete and accurate statement of its contents.

4. BOL denies the allegations set forth in paragraph 4 of the Notice of Opposition.
5. BOL denies the allegations set forth in paragraph 5 of the Notice of Opposition.
6. BOL denies the allegations set forth in paragraph 6 of the Notice of Opposition.
7. BOL denies the allegations set forth in paragraph 7 of the Notice of Opposition.
8. BOL admits that the non-Latin characters in the applied-for mark transliterate to “BOL GAPPA,” which means “BOL GOSSIP” in English.

9. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States, except admits that BOL’s applied-for mark contains the term “BOL.”

10. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States.

11. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States.

12. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States.

13. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States.

14. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States.

15. BOL denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Notice of Opposition inasmuch as BOL is unaware of IMC having ever made any use of any mark in the United States.

16. BOL denies the allegation set forth in paragraph 16 of the Notice of Opposition.

17. BOL denies the allegation set forth in paragraph 17 of the Notice of Opposition.

18. BOL denies the allegation set forth in paragraph 18 of the Notice of Opposition.

19. BOL denies the allegation set forth in paragraph 19 of the Notice of Opposition.

20. BOL denies the allegation set forth in paragraph 20 of the Notice of Opposition.

21. The allegations set forth in paragraph 21 of the Notice of Opposition are irrelevant to this proceeding. BOL otherwise denies the allegation set forth in paragraph 21 of the Notice of Opposition.

22. The allegations set forth in paragraph 22 of the Notice of Opposition are irrelevant to this proceeding and inaccurate to the extent IMC's allegations falsely imply that the referenced injunction is still in effect. BOL otherwise denies the allegations set forth in paragraph 22 of the Notice of Opposition, except refers the Board to the cited exhibits for a complete and accurate statement of their contents.

FIRST AFFIRMATIVE DEFENSE

23. The Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

24. The claims asserted in the Notice of Oppositions are barred under the doctrine of res judicata in view of the Board's summary judgment decision in Consolidated Opposition No. 91216909, dated January 14, 2016.

THIRD AFFIRMATIVE DEFENSE

25. The Notice of Opposition is barred by the doctrines of estoppel, waiver, and/or acquiescence.

FOURTH AFFIRMATIVE DEFENSE

26. IMC lacks rights in the United States in the trademark BOL or any other trademark sufficient to maintain the instant Opposition.

FIFTH AFFIRMATIVE DEFENSE

27. IMC has committed fraud on the Trademark Office by the filing of Application Serial Nos. 86/288,431 and 86/464,807 and has also committed fraud on the Trademark Office by the filing of the instant Opposition based upon said applications. IMC is aware it is not the rightful owner of the mark on which it bases the instant opposition, namely, BOL. IMC nevertheless signed declarations in support of said applications wherein it swore, under penalty of perjury that, *inter alia*, it was the owner of the mark applied for and that it knew of no other person or entity which had the right to use the mark. IMC's statements that (1) it was the owner of the mark applied for and (2) that it knew of no other person or entity entitled to use the mark constitute false statements of material fact by IMC made knowingly with the intent to deceive the Trademark Office and/or in reckless disregard for the truth. Accordingly, IMC has

committed fraud on the Trademark Office by the filing of Application Serial Nos. 86/288,431 and 86/464,807 and by the filing of the instant Opposition based in whole or in part upon said applications.

SIXTH AFFIRMATIVE DEFENSE

28. The Notice of Opposition is barred by the doctrine of unclean hands based upon IMC's bad faith filing of Application Serial Nos. 86/288,431 and 86/464,807 for the mark BOL as set forth more fully in paragraph 27 above.

WHEREFORE, BOL prays that the Board:

- (1) dismiss IMC's opposition claims with prejudice;
- (2) allow BOL's Application Serial No. 86/478,579 to proceed to registration; and
- (3) award BOL such further and other relief as the Board deems just and proper.

Dated: New York, New York
April 21, 2016

Respectfully submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.

By: /Joel Karni Schmidt/
Joel Karni Schmidt
Richard S. Mandel
Scott P. Ceresia
114 West 47th Street
New York, New York 10036
(212) 790-9200

Attorneys for Applicant BOL Enterprise
(Pvt.) Limited